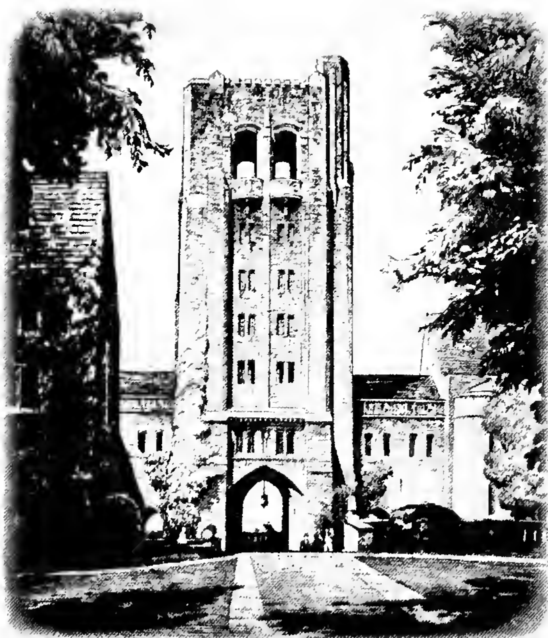

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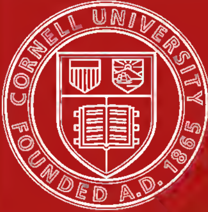

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LIVES

OF THE

CHIEF JUSTICES OF ENGLAND.

LORD KENYON.

From a painting by Sir T. Lawrence.

THE LIVES

OF

THE CHIEF JUSTICES

OF

ENGLAND.

BY

LORD CAMPBELL,

AUTHOR OF

"THE LIVES OF THE LORD CHANCELLORS OF ENGLAND."

IN FOUR VOLUMES.

VOL. IV.

NEW-YORK:
JAMES COCKCROFT & CO
1873

B42180

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LADY KENYON.

From a painting by Sir T. Lawrence.

LIVES

OF THE

CHIEF JUSTICES OF ENGLAND.

CHAPTER XLI.

LIFE OF LORD KENYON, FROM HIS BIRTH TILL HE WAS APPOINTED CHIEF JUSTICE OF CHESTER.

I BEGIN this Memoir at a time when I have the near prospect of being myself a CHIEF JUSTICE, and when I may calculate upon being subjected in my turn to the criticism of some future biographer.[1] On every account I wish to speak of Lord Chief Justice Kenyon in a spirit of moderation and indulgence. But I am afraid that my estimate of his character and judicial qualifications may call forth against me a charge of prejudice and detraction. Although till raised to the bench he was considered only "*legulcius quidam, cautus et acutus*," he was afterwards celebrated by dependents and flatterers as a GREAT MAGISTRATE, to be more honored than the all-accomplished MANSFIELD. And from the stout resistance which then continued to be offered in Westminster Hall to all attempts to relieve the administration of justice from wretched technicalities, Lord Chief Justice Kenyon was long hailed as the Restorer of the rigid doctrines to be deduced from the Year Books.

He was indeed a man of wonderful quickness of perception, of considerable intellectual nimbleness, of much energy of purpose, and of unwearied industry;—he be-

[1] 12 *October*, 1849.—It had then been intimated to me by the Prime Minister that upon the resignation of Lord Denman, which, from his severe attack of paralysis, was daily expected, I should be appointed his successor.

came very familiarly acquainted with the municipal law of this land; he was ever anxious to decide impartially; and he was exemplary in his respect for morality and religion. But never having supplied by study the defects of a very scanty education, he was unacquainted with every portion of human knowledge except the corner of jurisprudence which he professionally cultivated; he had not even the information generally picked up by the clever clerk of a country attorney from bustling about in the world; of an arrogant turn of mind, he despised whatever he did not know, and, without ever *doubting*, bitterly condemned all opinions from which he differed; --giving way to the impulses of passion, he unconsciously overstretched the severity of our criminal code; he never sought to improve our judicial system either by legislation or forensic decision; and his habits of sordid parsimony brought discredit on the high station which he filled. It is impossible, therefore, that in tracing his career I should be able to abstain from sometimes expressing regret and censure. I must thus incur the displeasure of some Englishmen who have been accustomed blindly to admire him, and of the whole Welsh nation, who [not from a penury of great men] worship him as an idol, and prefer him to their countryman Chief Justice Vaughan, who really was a consummate common-law judge, and to their countryman Sir Leoline Jenkins, who was both a profound civilian and a distinguished statesman. But as Lord Kenyon actually was Chief Justice of England for fourteen years,—in the prosecution of my plan I must proceed, whatever perils I may encounter.

One might have expected that we should have had a Kenyon pedigree extending to King ARTHUR, if not to ADAM; but although the family, when transplanted to the Principality, became intensely Welsh, this event happened so recently as the commencement of the last century. In the reign of Charles II. the Kenyons were settled in Lancashire, one of them representing the borough of Clitheroe in the House of Commons, and another being deputy-governor of the Isle of Man under the Earl of Derby. The Chief Justice's grandfather, a younger brother without portion or profession, married

the heiress of a Mr. Luke Lloyd, a yeoman, who had a small estate at the Bryn, in the parish of Hanmer, in the county of Flint; and their son, following a good example, gained, by marriage with the daughter of Mr Robert Eddowes, the small estate of Gredington, in the same parish. He was now elevated to the rank of a country gentleman, and his name was inserted in the commission of the peace for Flintshire—a distinction of which Lord Kenyon used often to boast. The squire or squireen, cultivated his own land, and in point of refinement was little above the low level of the surrounding farmers. He had a numerous family, whom he found it a hard matter to maintain and decently to educate.

His second son, who was to confer such honor upon Gredington, was born there on the 5th of October, 1732, and, out of compliment to his maternal grandmother, was baptized by the name of Lloyd. This boy, though rather of an irascible disposition, and accustomed, it is said, to beat his nurse with his little fists when she crossed him, early displayed very quick parts, and was very affectionate. Having been taught to read at a dame's school in the village, he was sent to the free grammar-school in the neighboring town of Ruthin, which had the reputation of being the best classical foundation in the Principality. Here he stayed long enough to acquire a little Latin in addition to his Welsh and English; but he never knew even the Greek characters, and of no other language had he a smattering except some law phrases in Norman French. He never advanced further in the abstract sciences than the "Rule of Three;" and he is said piously to have believed to his dying day that the sun goes round the earth once every twenty-four hours.

Of four brothers he was declared to be the *'cutest*, and he was dedicated to the law; but there was then no notion of his ever rising higher than being a Welsh attorney—advising the overseers of the adjoining parishes, and carrying on suits in the Court of Quarter Sessions for the county of Flint. Accordingly, at the age of 14, he was articled to Mr. Tomkinson, an attorney at Nantwich; and for five years he was taught to serve writs and to engross deeds. "Gracious Heaven!" exclaimed

William Cobbett, who preferred enlisting as a common soldier to such occupations, "if I am doomed to be wretched, bury me beneath Iceland snows, and let me feed on blubber; stretch me under the burning line, and deny me the propitious dews; nay, if it be thy will, suffocate me with the infected and pestilential air of a democrat's club-room; but save me, whatever you do, save me from the desk of an attorney." Lord Somers and Lord Macclesfield, although they submitted to the infliction, seemed to have felt the same disgust; and they could only get through their years of apprenticeship by purchasing books of elegant literature, and preparing themselves for the brilliant career to which they were destined. Young Kenyon was not only diligent and assiduous in doing his master's business, but was contented and happy, and never wished for a more amusing pastime than copying a long bill of costs, which gave the history of a lawsuit from the "Instructions to prosecute" to entering "Satisfaction on the Judgment Roll." He by no means confined himself to the mere mechanical part of his trade; on the contrary, he thumbed a book explaining the practice of the courts, and he initiated himself in the mysteries of *conveyancing*, from which the profits of a country attorney chiefly arise.

Once he was actually seduced to "pen a stanza." A brother clerk, of the name of Cadwallader, was an enthusiastic votary of the muses, and twitted him with his degeneracy from his maternal ancestors, who had listened with rapture

"To high-born Hoel's harp and soft Llewellyn's lay."

The blood of the Lloyds was warmed in his veins, and he declared that although he felt he could not equal Cadwallo, Urien, and Modred, who, he was told, made huge Plinlimmon bow his cloud-topped head, he should show that at least he had a Welsh heart. He took for his subject "WYNNSTAY," the seat of Sir Watkin Williams Wynn, considered in North Wales as the representative of the Welsh Princes—and thus he sung:—

"There WATKIN stood firm to Britannia's cause,
Guard of her ancient manners and her laws,
Oh, great, good man! borne on the wings of fame,

> Far distant ages shall revere thy name;
> While Clwyd's streams shall lave the verdant meads,
> And Snowdon's mountains raise their lofty heads;
> While goats shall o'er thy hills, O Cambria, stray,
> And day succeed to night, and night to day,
> So long thy praise, O WILLIAMS, shall remain
> Unsullied, free from dark oblivion's chain."

He was himself so much pleased with this composition that he sent it to Gredington, where it was loudly applauded, although there was some apprehension lest, "his parents' wishes doomed to cross," he might be led astray from his professional pursuits; but when, encouraged by this approbation, he showed the poem to his comrades in the office at Nantwich, he was for ever cured of his poetical propensity, for it was received with inextinguishable laughter. Long did "Clwyd's streams" resound in his ears, and a wicked wag reported that the original edition contained the couplet—

> "While *cheese* shall cheer the Cambro-Briton's sight,
> And *carw dha*[1] shall prove his chief delight."

Kenyon never rhymed more, and it is believed that he never afterwards read a line of poetry during his whole life, except the metrical translation of the Psalms of David when he was at church.

By his steadiness, intelligence, and uniform good conduct, he was deservedly a great favorite with his master, and he fondly hoped that, to crown his ambition, he might be taken into partnership by this topping practitioner, and eventually succeed him. A negotiation for this purpose was actually opened, but Tomkinson behaved ungenerously, demanding either a large premium, which the Kenyons could not afford to pay, or insisting on the young man being contented with a very small share of the profits, which would not have yielded him an income equal to that of a managing clerk.

It so happened at this time his elder brother, then studying at St. John's College, Cambridge, died suddenly, and it was thought that Lloyd, now heir to the small family estate, might aspire to the superior grade of the profession of the law. He himself would still have been satisfied with settling on his own account as an attorney at Ruthin, Denbigh, or any neighboring

[1] "Good ale." The Welsh say that *cervisia* is derived from *carw*.

town, where he would have been sure of soon getting into reputable practice by his own merit and his respectable connections: but he very submissively took the advice that was offered to him, and on the seventh day of November, 1750, he was admitted a student at the Middle Temple.[1] Happy had it been for his fame, and for the dignified administration of justice, if he had now been transferred to a university, where his manners might have been polished, his mind might have been liberalized, and he might have acquired the moderate portion of knowledge expected in an English gentleman.

Surely before students are entered at the Inns of Court there should be a preliminary examination, to know whether they have acquired the elements of a liberal education. Such a regulation could not be complained of, like the exclusion of all who could not produce a certificate from the Heralds' College of gentle birth. Leaving a free course to merit emerging from obscurity, it would guard the profession of the law from the intrusion of those who bring discredit upon it by their ignorance, and would protect the administration of justice from being perverted by vulgar prejudices haunting the minds of those placed in high judicial stations. Kenyon, by a little preliminary training at this period of his life, might have been taught to correct or to suppress his bad Latin, and might have escaped the peril which tarnished his judicial reputation, when, with furious zeal, he thought he was serving the public by laying down for law that a merchant was guilty of a misdemeanor by purchasing commodities with the intent to sell them again at a profit.

But he was at once transferred from his desk, in his master's office at Nantwich, to a small set of chambers

[1] "Die 7 Novembris, 1750.
"Mar Lord Kenyon filius et Hæres apparens Lloyd Kenyon de Gredington in comitatu Flint in principalitate Walliæ armigeri admissus est in Societatem Medij Templi London specialiter.
"Et dat. pro ffine . . . . 4 0 0."
Examined copy from the books of the Middle Temple. In the Lives of Lord Kenyon hitherto published, it is said that his removal to London, and entrance at the Middle Temple, did not take place till 1755, although his printed reports of Cases decided in the Courts of Chancery and King's Bench begin in 1753.

on the fourth story in Brick-court, Middle Temple Lane. To the few books which he brought with him from the country, were now added Coke upon Littleton, Rolle's Abridgment, and Sheppard's Touchstone. But neither by the advice of others nor spontaneously, did he become acquainted with any author qualified to enlarge his understanding or to refine his taste. He had no suspicion that his education had been defective, nor the slightest desire to take any knowledge except law for his province.

Not having a university degree, it was necessary, according to the regulations then in force, that he should be five years a student before he could be called to the bar. During this long period he gave proof of unwearied diligence and rigid self-denial. He pored over his law books day and night. Being once treated to the play, he declared sincerely that he found no pleasure in the performance, and it is said that he never was again within the walls of a theater till, having reached the dignity of Chief Justice, he was prevailed upon to visit Drury Lane, that he might see the famous melodrame PIZARRO; when, falling asleep in the middle of the electrifying declamation against "avarice and ambition," Sheridan, the mortified author, vengefully exclaimed: "Alas! poor man, he fancies himself on the bench."

While yet a student at law, young Kenyon would indulge in the amusement of going to the office of Mr. Seckerson, an attorney, who was the town agent of his old master at Nantwich, reading the instructions for conducting pending suits, and seeing how business was prepared for the Courts at Westminster. By-and-by he diligently attended these Courts himself, and took copious notes of the arguments at the bar and of the judgments. His notes he methodized in the evening into respectable reports, which afterwards were very useful to him, and of which two volumes, containing cases from 1753 to 1739, were published in the year 1819, by his sons. I cannot much praise the style of the reporter, for he was careless about grammar, and he had no notion of elegant composition; but he shows that he perfectly well understood the points which were discussed and decided.

His finances being very limited, he kept account books for many years containing entries of every single farthing which he expended. These are still preserved, and contain mysterious abbreviated items, which have given rise to much speculation and laughter, but I believe that they may be explained without the slightest slur being cast upon his ever exemplary morals. Although the companions in whose society he chiefly delighted were those whom he met at Mr. Seckerson's, he made acquaintance in the Middle Temple Hall with some men who afterwards gained great distinction. Two of these were John Horne Tooke and Dunning, who were allied to him by penury as well as genius. "They used generally in vacation time to dine together at a small eating-house, near Chancery Lane, where their meal was supplied to them at the charge of 7½*d.* a-head."[1] Tooke, in giving an account of these repasts many years after, used to say, "Dunning and myself were generous, for we gave the girl who waited on us a penny a-piece, but Kenyon, who always knew the value of money, rewarded her with a halfpenny and sometimes with a *promise.*" Kenyon, when elevated to the Bench, without owning to the manner in which he was supposed to have treated the maid, would very manfully point out the shop where he had been accustomed to dine so economically; yet it is said he displayed evident signs of wounded pride when, under a subpœna, he was obliged in the Court of Common Pleas to prove the execution of a deed which he had attested while clerk to Mr. Tomkinson, at Nantwich.

Having eaten the requisite number of dinners in the Middle Temple Hall, on the 7th of February, 1756, he was called to the bar. But for many years he remained poor and obscure. He had no captivating powers to bring him suddenly forward, and it is recorded to his honor, that he never descended to any mean arts with a view to obtain business. For a long time had absolutely nothing to do in Westminster Hall. He laid himself out for conveyancing, and his Welsh connections gave him a little start in this line. His father furnished him with a Welsh pony, on which he rode the North Welsh

[1] Steeven's Memoirs of Horne Tooke.

Circuit, picking up a few half-guineas. He likewise attended the assizes at Shrewsbury and one or two other towns on the Oxford Circuit; but these were only a source of expense to him, which he could very ill afford. His resolution, however, was undaunted, and he felt that within him which assured him of ultimate success.

He never gained applause by any speech to a jury or even by any brilliant argument to the court; he was not only totally devoid of oratory, but he had no great power of reasoning; although he knew with intuitive quickness what was the right conclusion upon any legal question, he had not the art of showing how, according to the rules of dialectics, this conclusion was to be reached. After he had been ten years at the bar, it is said that he was desirous of quitting the profession of the law and taking orders, but that he could not obtain a presentation to the small living of Hanmer, in the county of Flint, to which he aspired.

His extraordinary merits as a lawyer were first discovered and developed, not by the public, nor by the judges, nor by the attorneys, but by a contemporary barrister. Dunning, instead of continuing to dine on cow-heel, shortly after being called to the bar was making thousands a year, and had obtained a seat in Parliament. He had many more briefs than he could read, and many more cases than he could answer. Kenyon became his *fag*, or in legal language his "devil,"—and thus began the career which led to the Chief Justiceship. With most wonderful celerity he picked out the important facts and points of law which lay buried in immense masses of papers, and enabled the popular leader to conduct a cause almost without trouble as well as if he had been studying it for days together—and many hundreds of opinions which Dunning had never read were copied from Kenyon's MS. by Dunning's clerk and signed by Dunning's hand. The only return which Kenyon received was a frank when writing to his relations, and this courtesy had once nearly led to a fatal quarrel between the two friends, for to the direction of a letter addressed to "Gredington, Flintshire," Dunning waggishly added, "North Wales, near Chester." This in-

sult to the Principality stirred up the indignation of the fiery Welshman, who exclaimed, "Take back your frank, Sir—I shall never ask you for another;" and was flying away in towering passion, but was at last appeased.

It gradually oozed out in the profession that Dunning's opinions were written by Kenyon, and the attorneys thought they might as well go at once to the fountain-head, where they might have the same supply of pure law at much less cost. Cases with low fees came in vast numbers to Kenyon, and so industrious and ready was he that they were all answered in a day or two after they were left at his chambers. He thus became a very noted case-answerer, and his business in the Court of Chancery gradually increased. One serious obstacle which he had to surmount was the brevity with which he drew deeds as well as bills and answers, for the profits of the attorneys unfortunately being in proportion to the length of the papers which pass through their hands, they are inclined to employ the most lengthy, rather than the most skillful draughtsman. But Kenyon refused to introduce any unnecessary recital, avoided tautology as much as possible, and tried to make the language he employed approximate to that of common sense.

Still, however, he seemed destined to be eminent in his day only in that class of chamber-counsel who make a comfortable existence by their labor, and, like other tradesmen, are forgotten as soon as they die. Dunning, after having been a short time Solicitor General, having resumed his stuff gown and gone into hopeless opposition, could not help him on, and without a powerful patron the honors of the profession were not within his reach.

But his fortune was made by the elevation of Thurlow to the woolsack. This man of extraordinary capacity and extraordinary idleness, when called to sit in the Court of Chancery earnestly desired to decide properly, and even coveted the reputation of a great judge, but would by no means submit to the drudgery necessary for gaining his object, and as soon as he threw off his great wig he mixed in convivial society or read a magazine. To look into the authorities cited before him in

argument, and to prepare notes for his judgments, Hargrave, the learned editor of Coke upon Littleton, was employed, but he was so slow and dilatory that the lion in a rage was sometimes inclined to devour his jackal. Kenyon, sitting in court with a very moderate share of employment, having once or twice, as *amicus curiæ*, very opportunely referred him to a statute or decision, was called in to assist him in private, and now the delighted Chancellor had in his service the quickest, instead of the most languid, of journeymen. He even took a personal liking for Kenyon, although in grasp of intellect, in literary acquirements, in habits of industry, in morals, and in every respect a striking contrast to himself. Laughing at his country, calling him by no other name than *Taffy*, holding up to ridicule his peculiarities, but knowing him to be a consummate English lawyer, he resolved to reward him by raising him to the bench.

A legal dignity falling in, Sergeant Davenport, who had strong claims on the Government and had met with many prior disappointments, thus applied for it, thinking that by his laconic style he might adapt himself to Thurlow's humor: "The Chief Justiceship of Chester is vacant—am I to have it?" The reply was in the same taste: "No, by G—d! Kenyon shall have it."

On Kenyon it was spontaneously bestowed, to his infinite gratification, for it left him still his lucrative practice at the bar; and not only had he a handsome salary with his new office, but Flint, his native county, was within his jurisdiction, and in the presence of his schoolfellows he was tc act the part of a Chief Justice.

CHAPTER XLII.

CONTINUATION OF THE LIFE OF LORD KENYON TILL HE WAS APPOINTED MASTER OF THE ROLLS.

IT has been said that we get on in the world more by receiving favors than by conferring them, and Thurlow was only incited by the snarling criticisms upon the appointment of the new Chief Justice of Chester to push on his *protégé* to higher elevation. Accordingly, on the dissolution of Parliament, which took place in the autumn of the year 1780, Thurlow negotiated Kenyon's return to the House of Commons for the now disfranchised borough of Hindon in the county of Wilts. There was a show of opposition at the election, and a petition was presented against the return, charging Mr. Kenyon with bribery. This called forth the only speech which he delivered, till, having long given silent votes, he had the extraordinary luck to be appointed Attorney General. A motion having been made to give precedence out of its turn to the Committee to try the merits of the election for the city of Coventry, "Mr. Lloyd Kenyon said he stood in the predicament of a member petitioned against on the heavy charge of bribery—that his moral character was bleeding afresh every hour the trial of the petition against him was delayed—that, in obedience to the regulations of the House, he had submitted, on the principle of general convenience, to the day on which the Committee to try the petition was fixed to be balloted for—that he had as much right to acceleration and preference as another; and, if another was to be favored, he should consider it an indication that hostilities were determined against him, and a grievous injury."

Kenyon's reputation was now very high as a lawyer. By his fee-books still extant, it appears that he made above £3000 a year by answering cases. His opinions, being clear, decisive, sound and practical, gave great

satisfaction, although he seldom assigned any reasons or cited any authorities. But he never acquired forensic reputation, and all that could be said for him as a counsel in court was, that he had uniformly read his brief, and was prepared to battle with force, if not with elegance, all the points which could arise in the course of the cause. There are only two criminal trials in which he is stated ever to have been engaged. The first was the prosecution of Mr. Stratton and his associates for deposing Lord Pigot, the Governor of Madras. Along with Erskine and other juniors, he assisted Dunning, who led for the defendants; but he only cross-examined a witness, without addressing the jury, and when, after a conviction, the judgment of the Court was prayed, he waived his right of speaking in mitigation of punishment.[1] Yet we are afterwards surprised all of a sudden to find him leading counsel in a very celebrated trial which required a display of the highest powers of eloquence. However paradoxical it may appear, the dry, technical lawyer, who could hardly construct a sentence of English grammatically, was very skillfully selected on this occasion.

Lord George Gordon was about to be tried for his life on a charge of high treason, because the mob which he headed while they strove tumultuously to present a petition to the House of Commons against Popery, had, afterwards, when he had left them, committed dreadful outrages in the metropolis, for which many of the chief malefactors had been very properly hanged. There was a strong prejudice against him on account of his imprudent speech, which had remotely, though unintentionally, lead to such disastrous consequences, and it was generally expected that he would be found guilty. He and his friends placed their only hope upon Erskine, who had been lately called to the bar, and had shown powers as an advocate unexampled in our judicial annals. But who was to be the colleague of this extraordinary youth? The statute of William III., to regulate trials for high treason, allowed a full defense by two counsel. No one junior to Erskine could be trusted, and his efforts would have been controlled and cramped by a senior of

[1] 21 Stat. Tr. 1045.

any reputation. Kenyon was therefore fixed upon. He was known to be a consummate lawyer, it was believed he would do no harm, and he was expected to act as a foil to Erskine, who was to come after him, and was sure to make up for all his deficiencies.

Though at first strongly opposed, from the dread that the jury might definitively make up their minds before Erskine could be heard, the hazardous plan was adopted, and it succeeded most admirably.

Kenyon, having practiced at Quarter Sessions, had some notion of cross-examination, and he thus dealt rather smartly with a witness who had sworn to seeing a flag, with an exciting Protestant motto upon it, carried in the mob which the noble prisoner led on: *Q.* "Can you describe the dress of this man whom, you say, you saw carrying the flag?" *A.* "I cannot charge my memory; it was a dress not worth minding—a very common dress."—*Q.* "Had he his own hair, or a wig?" *A.* "If I recollect right, he had black hair; shortish hair, I think."—*Q.* "Was there anything remarkable about his hair?" *A.* "No; I do not remember anything remarkable; he was a coarse-looking man; he appeared to me like a brewer's servant in his best clothes." —*Q.* "How do you know a brewer's servant in his best clothes from another man?" *A.* "It is out of my power to describe him better than I do. He appeared to me to be such."—*Q.* "I ask you by what means do you distinguish a brewer's servant from another man?" *A.* "There is something in a brewer's servant different from other men."—*Q.* "Well, then, you can tell us how you distinguish a brewer's servant from any other trade?" *A.* "I think a brewer's servant's breeches, clothes, and stockings, have something very distinguishing."—*Q.* "Tell me what in his breeches and the cut of his coat and stockings it was by which you distinguished him?" *A.* "I cannot swear to any particular mark." Thus, by a little bullying and browbeating, the witness was thrown into confusion; and, although all that he swore about the flag was correctly true, his evidence was discredited.

But when Mr. Kenyon came to address the jury, he performed so miserably that the prosecution resembled

an undefended cause, and poor Lord George afterwards declared that "he gave himself up for lost." To exhibit the most favorable specimen of this oration, I select the carefully premeditated *proemium* as it appears in the State Trials, after being corrected by the orator:—

"Gentlemen of the Jury: The counsel for the prosecution having stopped in this stage of the business, giving as a reason for not producing more witnesses, that they are afraid of tiring out the patience of the Court and the jury, it is the misfortune of the prisoner to make his defense at that period of the day when the attention of the Court and the jury must be, in some measure, exhausted. There are other difficulties which he also labors under; for, upon this occasion, I, who am assigned, by the Court, to be one of his counsel, confess myself to be a person very little versed in the criminal courts; I never yet stood as a counsel for a person who had so great a stake put in hazard; and therefore, gentlemen, in addressing you for him, I stand as a person in considerable agitation of mind for the consequences which may happen through my defects.

"When persons are accused of actions of great enormity, one is apt to look round about one to see what the motives were that could induce the parties so to act. The prisoner at the bar stands before you a member of one of the most considerable families in this country. At the time when this conduct is imputed to him, he was a member of the Legislature; he stood in a situation which he was not likely to better by throwing the country into convulsions. A person that stood in the situation he stood in, could not make his prospect better than in seeing the affairs of the country conducted under legal government; and if he thought any inroads had been made upon those laws which the wisdom of our ancestors had enacted, it was his business to bring about the repeal of those laws, to redress those grievances, by proper legal means, and not by causing a revolt in this country. This being the case, and as his conduct may be imputed to good or bad motives, it seems reasonable, and humanity will induce you, to impute it to proper rather than improper motives, the

noble prisoner being, as I have said, a man standing in a situation who had everything to expect so long as law prevailed, but nothing to expect when anarchy was substituted in the place of law.

"The crime imputed to the noble prisoner is, that he, being a liege subject of the King, had levied war against the King. The crime is imputed to him under an Act of Parliament enacted for the wisest purpose, that crimes of this very enormous nature should not depend upon loose construction; but that men, in their journey through life, might, by looking upon the statute, see what the plan of their duty was, might see what the rocks were upon which they were not to run, and might see, in the plain words of the statute, what they were to do, and what to avoid. The Attorney General has told you, very properly, that the crime which he meant to impute to him was not a crime against the person of the King, but that it was a constructive treason. Gentlemen, I have only to lament that there is such a phrase in the law as constructive treason. At the time when the law was enacted, I verily believe the Legislature had it not in their contemplation that the words constructive treason would find their way into the courts at Westminster; but however, so it seems the law is; for so it seems, upon some certain occasions, Judges have decided."

He afterwards handled all the witnesses *seriatim* in the order in which they were called, reading their evidence from the notes on his brief, and making trivial comments upon them. At last he arrived at his peroration: "I know that I speak to men of character and station in the world, and of good sense, and who know that their duty is to do justice; and know at the same time that every favorable construction is to be made in behalf of the prisoner. That has always been the language of courts, and will be the language of this court this day."

If the trial had here concluded, the jury, without leaving the court, would inevitably have found a verdict of *guilty;* but Erskine followed and restored the fortune of the day. It was impossible for him, with a grave face, to praise the eloquence of the discourse which had

just been delivered; but with the utmost courtesy and generosity he sought to cover the failure of his leader, complimenting him upon his powers of cross-examination, and dwelling particularly upon the "breeches of the brewer's servant." After a most masterly exposition of the law of high treason, he clearly proved that, even giving credit to all that had been sworn on behalf of the Crown, the prisoner had neither imagined the King's death. nor levied war, within the meaning of the statute of Edward III. by which treasons were defined. So there was a glorious acquittal.[1]

It should be related to Kenyon's credit that on this occasion he was entirely free from jealousy and envy, although so outshone. On the contrary, he felt nothing towards his junior but admiration and gratitude, which continued through life, notwithstanding their political differences—insomuch that he would hardly believe the stories which were afterwards told of Erskine's immoralities; and when some things were related which could not be denied, he would exclaim, "Spots on the sun—only spots on the sun!"

Mr. Kenyon's subsequent forensic displays were confined to arguing in the Court of Chancery such matters as the construction of a will or exceptions to the Master's report. But we must now attend to him as a politician. In the House of Commons he steadily voted with Lord North's Government till the critical division which put an end to it. On this occasion he absented himself on the plea of indisposition.[2]

Thurlow continuing, to the astonishment of all mankind, to hold the Great Seal under Lord Rockingham and the Whigs, now contrived to have his old "devil" Kenyon placed in the situation of Attorney General. This appointment caused considerable discontent, for the law officers of the Crown had long been men of liberal acquirements and of great weight in the House of Commons. Undervaluing his own qualifications, Thurlow observed that the chief object in such an appointment was to have a sound lawyer, who could give good advice to the Government, and that Kenyon was allowed on all hands to be more familiarly acquainted with every

[1] 21 St. Tr. 485–652.

[2] 22 Parl. Hist. 1208.

branch of the law than any of his competitors,—that the silence which he had hitherto observed in the House of Commons argued discretion,—and that his zealous official services henceforth would be found of high value. The objection that this favorite had been strenuous for carrying on the war with America and against conciliation could not be decently urged, as the patron was in the same predicament. So Lord North's Attorney General Wallace was turned out, and Kenyon, who had copied his principles and his conduct, succeeded him—to the peculiar chagrin of Whig barristers and considerably to the detriment of the new Whig Government. Dunning, become Lord Ashburton, Chancellor of the Duchy of Lancaster, and a member of Lord Rockingham's Cabinet, was suspected, in spite of repeated denials, of favoring the elevation of a man of notoriously anti-Whiggish principles, in consideration of the valuable assistance formerly rendered to himself in answering cases and noting briefs.

The new Attorney General was a little puzzled by some of the questions on international law which arose from the "armed neutrality" of the Northern powers, entered into with a view to encroach on our belligerent maritime rights; but by industry he got up pretty well the learning about blockades, contraband of war, and *free bottoms* making *free goods*, and on all subjects of municipal law he advised the Government more promptly, more decisively, and more correctly than any law officer of the Crown had done for many years.

He first opened his mouth in the House of Commons, after being appointed Attorney General, in an altercation with Mansfield, the late Solicitor General, who, in the debate on Lord Shelburne's measure for arming the people, had represented the volunteers in Ireland as having constituted themselves the government of the country, and although several times called to order, had insisted on going on in the same strain. At last, "Mr. Attorney General Kenyon expressed his surprise that his learned friend should have put the House under the necessity of calling him to order three different times, and as his speech had a dangerous tendency if persevered in, he must be called to order again." Mansfield de-

clared himself hurt by the Attorney General's speech, which he said could not be calculated for any good purpose, and no part of his past life would justify the imputation that he would intentionally make any observation which could be injurious to the country. *Kenyon:* "I did not speak in the most measured terms, because I saw my learned friend on the brink of a precipice, and I was eager to save him from falling." Mansfield declared himself quite satisfied with this explanation, and their friendship continued without abatement.[1]

Mr. Attorney General, till ejected by the Coalition Ministry, spoke only on one subject—the recovering of balances due to the Exchequer from those who had held the office of Paymaster-General to the Forces; and here he displayed zeal which was supposed to be a little heated by his desire to please the Chancellor, by his preference to the Shelburne section of the Cabinet, and by his antipathy to the family of Fox. He astonished the House by his observations on certain resolutions moved by Lord John Cavendish, the Chancellor of the Exchequer, which had for their object prospectively to put the Paymaster of the Forces and other public accountants on fixed salaries, and to prevent them from retaining any public money in their hands to be employed for their own profit. Mr. Attorney General Kenyon said—

"He would not oppose the resolutions, but he would have it understood that he did not preclude himself in the smallest degree from a full right and liberty to discuss in a court of justice the question, 'whether the public might not call upon the great servants of the public to account for the great emoluments they had made by means of the public money?' He spoke not from any ill will to any man alive, but solely from a sense of duty in an office which he had been unexpectedly, as he was undeservedly, called to fill. He did not know how long he might remain in it; but if he should be dismissed from it, he should return to much domestic happiness, which he had enjoyed before he was called into public life; but while he remained in it he was determined to do his duty."

[1] 23 Parl. Hist. 9.

Mr. Secretary Fox: "I cannot join with my learned friend, his Majesty's Attorney General, in the observations he has thrown out. I contend, as I have often done before, that when a balance of public money lies in the hands of a public accountant, all the public have a right to expect from him is, that whenever the money shall be called for, it shall be forthcoming. To future regulations on the subject I offer no objection. I wish that my learned friend would leave some room for prescription, and draw some line beyond which his inquiry shall not go, otherwise it will be in the power of the King's Attorney General to keep in constant alarm and the worst of slavery all those who have ever filled any public office and their descendants. It may happen that a public accountant may have acquired a great fortune by a fair and honorable use of public money, and his descendants may, by their folly and imprudence, have completely dissipated and destroyed it: are these descendants to be called upon to account for the profits made by their ancestors? Let the line be drawn, and I shall be satisfied."

Nevertheless, in the course of a few days, Mr. Attorney General, disclaiming all personal motives, moved certain resolutions, which would have made Mr. Fox, who had not a shilling in the world, although now Secretary of State and aspiring to the Premiership, liable for interest on all the balances of public money which had ever been in his father's hands—on the alleged ground that as the principal sums belonged to the public, the public was entitled to all the profit made of them—observing that, although he now acted without communication or concert with any members of the Government, he had consulted lawyers of high eminence in Westminster Hall, who unanimously agreed with him that the rule by which trustees were bound in a court of equity applied to public accountants.

Mr. Fox: "It might have been as well if my honorable and learned friend had consulted some member of the Government before, as organ of the Government, he moved these resolutions. He says that lawyers whom he has consulted are of opinion that the public have a right to claim all the profits of their own money in the

hands of a public accountant. This may be law, but it does not appear to be common sense, and therefore I suspect that it is not law, for the law of England and common sense are seldom at variance. The comparison between a public accountant and a trustee will not hold good. A guardian, for instance, having his ward's money in his hands, may and ought to put it in a state of lucration. If he vests it in the public funds, and they rapidly fall, the loss falls on the minor, and not on the guardian. But what would be said, under similar circumstances, to a public accountant of the Treasury? 'We have nothing to do with your losses, you must bear them yourself—it was not by our direction that you put out the public money to interest.' To call for interest from a public accountant would be to justify him in placing the public money out at interest, and to make the public liable for the losses which might ensue."

Mr. Wallace, the ex-Attorney General, said that whatever others in Westminster Hall might think, he felt no difficulty in declaring that the public had no such right, and he believed that he should not be found singular among the gentlemen of the long robe. It was a clear maxim in law that whatever party received the profit, the same party ought to bear such losses as the property sustained; but all were agreed that the public had nothing to do with any loss arising from the use of public money, and that a public accountant being liable for the whole of his balances, the last shilling of his property, and his liberty too, must answer for any deficiency.

The Attorney General took fire at the idea of imputing to him any thoughts of personality or malevolence in his conduct on that day; he hoped the gentleman did not look into his own heart to find out the motives by which he was actuated that day.

Some of the Attorney General's resolutions were withdrawn, and the others were negatived.[1]

On the death of Lord Rockingham and the resignation of the Foxite Whigs, Kenyon continued in office under Lord Shelburne, but took no part in the debates on the treaty of peace, or on any other subject during this administration. The "COALITION" having stormed

[1] 23 Parl. Hist. 115–134.

the royal closet, he was replaced by his rival Mr. Wallace, and he enlisted himself under Mr. Pitt, without adopting any of the liberal principles which illustrated the early career of this most distinguished statesman.

The ex-Attorney General led the opposition to the first measure of the new government—a bill to facilitate the collection of the malt duties—and he acted as teller on the division, but found himself in a minority of forty-seven to twelve.[1]

He returned to the attack upon Mr. Fox by asking a question of the government, "whether there was any intention of reviving a bill which he had filed in the Exchequer against Mr. Powell, the executor of the late Lord Holland, and which had abated by the death of that gentleman?" The Solicitor General said, "he hoped the bill would never be revived to the full extent of that which had abated—which was for the recovery of all the profits which had ever been made from the use of public money by the late Lord Holland—a measure which appeared to him so unjust, vexatious, and oppressive—so contrary to the received practice of all paymasters for a century, and which would lay under such terrible apprehensions the descendants of all former paymasters, without any limitation as to time, that he would sooner resign his office than concur in such an abuse of the supposed prerogative of the Crown." Mr. Fox complained that "of all the former paymasters, his father was the only one whom the late Attorney General had singled out for the purpose of exacting from his executors what would reduce the whole family to beggary. This was a *prosecution* which, considering the situation in which he stood when it was commenced, looked very like a *persecution*." Mr. Pitt, much ashamed of what had been attempted, said, "he did not himself think that such a demand should be made by the public; but if the demand was legal, though oppressive, his learned friend was justified in enforcing the law, leaving it to the legislature to give relief." *Mr. Burke:* "Then Empson and Dudley, who were properly hanged, might have been justified on precisely the same ground."[2]

When a bill for reforming the abuses of the Ex-

[1] 23 Parl. Hist. 1026.

[2] Ib. 1060.

chequer was passing through the House of Commons, the ex-Attorney General showed his gratitude to Lord Thurlow by supporting a clause by which the tellership of that noble lord should be exempted from its operation, on the ground that although there had been no bargain on the subject, when he accepted the great seal, which would have been very dishonorable, there had been an expectation and an understanding which ought to be respected. Lord North said, "this was what the French called '*unir les plaisirs du vice au mérite de la vertu*,'" and the clause was rejected.[1]

In the debate respecting amending the receipt tax, Mr. Sheridan made the House very merry by referring to an opinion of the ex-Attorney General on the subject, which had been published in all the newspapers, along with another signed OLIVER QUID.

Mr. Kenyon: "I did write the opinion which the honorable gentleman has alluded to in the regular course of my professional practice, not for the purpose of obstructing the collection of the receipt tax, or annoying the government. I believe it is sound, and I abide by it. By putting the opinion of a professional lawyer and that of OLIVER QUID on the same footing, the honorable gentleman has lowered himself and not me. With regard to its appearance in the newspapers, I am proud to say that I have no connection with them. I never wrote paragraphs for them, nor paid news writers for the rubbish which they contain. I am not solicitous for newspaper fame, nor are any of the prints of the metropolis retained in my service, although they all may be in the service of others."[2]

This speech is said to have been "very tartly delivered," and it certainly shows great boldness, considering the withering retaliation to which he exposed himself.

When the announcement was made that the Coalition Ministry, equally odious to the King and the nation, had been dismissed, Mr. Kenyon naturally expressed his exultation, and a question having been put whether Mr. Pitt, the new Premier, would dissolve Parliament, he said, very properly, "I am not in the secrets of those who are just gone out, or of those who are coming in.

[1] 23 Parl. Hist. 1090–91.
[2] Ib. 1222.

and therefore I do not know what measures are likely to be adopted. But this I know, that the power of dissolving Parliament is in the Crown alone, and that this House has no constitutional right to prolong its existence by its own authority."[1] As soon as Mr. Pitt had filled up the higher offices of the Government, Mr. Kenyon again succeeded Mr. Wallace as Attorney General.

In this capacity he only once more came forward, and that was in the discharge of "the duty he had sworn to perform"—compelling the payment of Paymasters' balances. The object of his attack now was Mr. Rigby, who had long been Paymaster under Lord North, and had rendered himself highly obnoxious by siding with the Coalition. Without any notice to him whatever, a motion was abruptly made "That the Right Hon. Richard Rigby, late Paymaster-General of the Forces, do deliver to the House an account of the balance of all public money remaining in his hands on the 13th day of November last." Rigby complained bitterly that "the proceeding was contrary to all practice. The want of civility did not surprise him, as such a thing he had no right to expect from the learned gentleman. He appealed to the House whether even common decency had been observed in bringing forward in such a manner a question so very personal."

The Attorney General excused the want of notice by his having come down to the House so late, and again dwelt upon the sacred duty cast upon him when he took the oath of office, as Attorney General, to watch over the rights of the Crown:—

Mr. Rigby: "I will leave the House to judge of the learned gentleman's candor and his motives. I might ask if any individual ever experienced such treatment from an Attorney General. The obligation of his oath is his excuse. But this prodigious obligation only operates against his political opponents; and a very different interpretation was put upon the Attorney General's oath of office by his predecessors, Lord Camden, Lord Thurlow, Lord Loughborough, and Mr. Wallace, who really were honorable men."[2]

[1] 24 Parl Hist. 234.

[2] 24 Parl. Hist 672.

Kenyon had all this time retained the office of Chief Justice of Chester, and twice a year traveled the North Welsh circuit as a Judge.

At the Great Sessions, held at Wrexham, for the county of Denbigh, in September, 1783, the celebrated case stood for trial before him of *The King* v. *The Rev. William Shipley, Dean of St. Asaph*, which was an indictment for publishing the "Dialogue between a Scholar and a Farmer," written by Sir William Jones. Erskine came special as counsel for the defendant, and, an acquittal being anticipated, a motion was made to put off the trial on pretense that some one unconnected with the defendant had published a pamphlet, and distributed it in Wales, inculcating the doctrine that the Jury, in cases of libel, are judges of the law as well as of the fact, and may return a verdict of *not guilty*, although the act of publication was proved, if they should be of opinion that the alleged libel contains nothing libelous. Erskine very indignantly resisted the application, but was overruled by the Chief Justice. The Dean of St. Asaph made an affidavit, showing that the supposed libel, which was a very harmless explanation of the principles of representative government, had been written by Sir William Jones, lately appointed an Indian Judge, and that the prosecution was maliciously instituted by an individual after the Government, by the advice of the Attorney and Solicitor Generals (Mr. Wallace[1] and Mr. Lee), had refused to prosecute, and that he himself was not in any degree privy to the circulation of the pamphlet respecting the rights of juries. This affidavit being read and commented upon by counsel, the defendant himself interposed, and earnestly implored that he might be allowed then to take his trial:—

Kenyon, C. J.: "*Modus in rebus*[2]—there must be an end of things."

Dean of St. Asaph: "Think, my Lord, of the anxiety I have suffered and the expense I am put to. Let me

[1] The Chief Justice professed great respect for Mr. Wallace, with whom he had several times exchanged the office of Attorney General, but was highly offended by his opinion being stated that the "Dialogue" was not a libel.

[2] This classical quotation his Lordship was in the habit of introducing when he thought it was full time to put an end to any discussion.

stand or fall by the decision of this jury: let me, if innocent, once more stand up as an honest injured man; if guilty, let me be dragged to a dungeon."

Kenyon, C. J.: "When the jury had given their verdict, if they find you *guilty*, the court will then consider what judgment to pass."

Dean of St. Asaph: "My Lord, in God's name let me have a verdict one way or the other. Don't let me be kept longer in suspense."

Kenyon, C. J.: "I desire that after I have given the judgment of the Court, that judgment may not be talked about; I have given it upon my oath, and I am answerable to my country for it. I have been before reminded that these things are not passing in a corner, but in the open face of the world. If I have done amiss, let the wrath and indignation of Parliament be brought out against me: let me be impeached. I am ready to meet the storm whenever it comes, having at least one protection—the consciousness that I am right. In protection of the dignity of the Court, I do the best thing I can do for the public; for if my conduct here is extrajudicially arraigned, the administration of justice is arraigned and affronted, and that no man living shall do with impunity."

So the trial was postponed,—and when the case was entered again at the Great Sessions in April, 1784, Erskine a second time attending as special counsel for the defendant, it was removed by *certiorari*, and it came on before Judge Buller at the Sherewsbury Assizes in August of the same year, when the ever-memorable struggle took place between Erskine and Mr. Justice Buller.[1]

[1] 21 St. Tr. 847.

CHAPTER XLIII.

CONTINUATION OF THE LIFE OF LORD KENYON TILL HE WAS APPOINTED CHIEF JUSTICE OF THE KING'S BENCH.

IN the spring of 1784 died Sir Thomas Sewell, who had been many years Master of the Rolls, and Mr. Kenyon claimed the vacant office, which was conceded to him. He rather wished to have withdrawn from Parliament altogether, feeling that he was unfit for it; but, luckily for him, the Secretary for the Treasury insisted upon his finding himself a seat, that he might swell the ministerial majority expected in the new House of Commons. As yet Mr. Pitt had no high opinion of him, and had reluctantly agreed to his being restored to his office of Attorney General, and to his promotion to be Master of the Rolls. But he was endeared to the Premier by his services connected with the Westminster election.

Kenyon fulfilled his engagement with the Government by purchasing his return for the borough of Tregony, and he could not have been blamed if, thinking little more of politics, he had simply attended to vote when he received the treasury circular; but being compelled to disburse a large sum for his seat, he declared (in American phrase) that "he was resolved to go the whole hog." He therefore became a most zealous partisan, and strove to make himself conspicuous as a supporter of the government. His influence was now great among his countrymen in Wales, and was able to procure votes for the ministerial candidate in several counties and boroughs within the limits of his jurisdiction as Chief Justice of Chester. These services, however, were little noticed, compared with those which he rendered in the election for the city of Westminster. The grand object was that Mr. Fox might appear to be

rejected by his former constituents, and that the disgrace should be heaped upon him of being turned out by a man so obscure and ridiculous as Sir Cecil Wray. His Honor, the new Master of the Rolls, now occupied a house in Lincoln's Inn Fields, beyond the limits of the city and liberties of Westminster; but his stables, behind the house, were in the parish of St. Clement Danes, within the "Liberties," and for these he was rated and paid *scot and lot*. But, unfortunately, he could not as yet be said to be an *inhabitant* of the city or liberties. To get over this difficulty, he had a bed fitted up in the hay-loft over his stables; there he slept several nights, and then he went to the poll, and gave a plumper for Cecil Wray.

Such a proceeding might be justified or excused, but I am sorry to be obliged to condemn, in unqualified terms, the advice which he gave respecting the "Scrutiny." This proceeding brought great and deserved obloquy upon the Prime Minister, whose character was yet so fair, and Kenyon's support of it was reprobated even by one of the most zealous and able lawyers on the ministerial side.

After the election had lasted forty days, Mr. Fox had a considerable majority over Sir Cecil Wray; but, at the return of the writ, the High Bailiff, instead of returning him with Lord Hood, who was at the head of the poll, corruptly granted a scrutiny, and stated, in answer to the mandate requiring him to return two citizens to serve for the City of Westminster, that "he should proceed with the scrutiny as expeditiously as possible." According to the rate at which it was advancing, the calculation was that it could hardly finish before the end of the Parliament, and that it would involve Mr. Fox in an expense of £20,000. Several motions were made in the House of Commons that the High Bailiff should be ordered to make an immediate return. In opposing these the Master of the Rolls took the lead, and he contended "that the scrutiny was perfectly legal; that it might be continued after the return of the writ; that the High Bailiff could not properly make a return till he had satisfied his conscience which of the two candidates had the majority of good votes; that he

ought to have the requisite time for this purpose, and that to force him to make an immediate return would be contrary to the maxim of justice, never to be forgotten —*audi alteram partem.*" His Honor likewise mixed up his juridical argument with bitter invectives against the "Coalition," citing several passages from Mr. Fox's speeches during the American War, in which he had asserted that Lord North ought to be impeached and punished.

Mr. John Scott (afterwards Lord Eldon), although a warm admirer and generally a steady supporter of Mr. Pitt, took a totally different law of the subject, and contended that both by common law and statute law the election must be finally closed before the return of the writ, so that the subsequent scrutiny was unlawful. Said he:—

"A very unnecessary tenderness is shown for the conscience of the High Bailiff. There will be no torture administered to it by compelling him to make a return before he has finished his scrutiny, for his oath only binds him to act according to the best of his judgment, and to return the candidate that has the majority of admitted votes. I confess I do not like that conscience in returning officers, under color of which they may prevent the meeting of parliament for ever, or, at least, present the nation with the rump of a parliament on the day when the representatives of the whole nation ought to assemble."

Mr. Fox, in characterizing his opponents, when he came to the Master of the Rolls, said:—

"A third person there is whom I might in reason challenge upon this occasion—a person of a solemn demeanor, who, with great diligence and exertion in a very respectable and learned profession, has raised himself to considerable eminence—a person who fills one of the first seats of justice in this kingdom, and who has long discharged the functions of a judge in an inferior sphere.[1] This person has made a great parade of the impartiality with which he should discharge his judicial conscience as a member of Parliament in my cause. Yet this very person, insensible to the rank he maintains, or should

[1] Chief Justice of Chester.

maintain, in this country, abandoning the gravity of his character as a member of the senate, and losing sight of the sanctity of his station both in this House and out of it, in the very act of passing sentence, is whirled about in the vortex of politics, and descends to minute and mean allusions to former party squabbles. He comes here stored with the intrigues of past times, and instead of uttering the venerable language of a great magistrate, he attempts to entertain the House by quoting or by misquoting words supposed to have been spoken by me in the heat of former debates, and in the violence of contending factions. Not only does he repeat what he supposes I said when my noble friend and I were opposed to each other, but he goes still farther back, and to prove that I should now be prevented from taking my seat for Westminster, reminds the House that when I first sat here as representative for Midhurst, I had not reached the full age of twenty-one years. Might I not, then, fairly protest against such a man, and men like him, sitting in judgment npon me?"

In reference to Mr. Scott's speech, Mr. Fox said:—

"One learned gentleman, a political opponent, has shown that he has both honor and intelligence. He has entered into the whole of the case with a soundness of argument and a depth and closeness of reasoning that scarcely been equaled in the discussion of any juridical question within these walls." [1]

Lord Eldon, when in extreme old age, observed:—

"Fox never said an uncivil thing to me during the whole time I sat in the House of Commons, and I'll tell you to what I attribute that. When the legality of the conduct of the High Bailiff of Westminster was before the House, all the lawyers on the ministerial side defended the right to grant the scrutiny. I thought their law bad, and I told them so. I asked Kenyon how he could answer *this*—that every writ and commission must be returned on the day on which it is made returnable? He could not answer it. Fox afterwards came to me privately and said something very civil and obliging."

The Master of the Rolls was rewarded for his self-sacrifice by a Baronetcy, but he was made the subject of

[1] 24 Parl. Hist. 808–940 · 25 Parl. Hist. 1–146.

many cutting jests. The "Rolliad" coming out soon after, the work was dedicated, "To Sir Lloyd Kenyon, Bart., Master of the Rolls," and in the title page was exhibited, as the supposed crest of the family of Rolle, "a half-length of the Master of the Rolls, like a lion, demi-rampant, with a roll of parchment, instead of a pheon's head, between his paws"—thus celebrated:—

"Behold th' engraver's mimic labors trace
The sober image of that sapient face:
See him in each peculiar charm exact,
Below dilate it, and above contract;
For Nature thus inverting her design,
From vulgar ovals has distinguished thine;
See him each nicer character supply—
The pert no-meaning puckering round the eye;
The mouth in plaits precise, demurely closed;
Each ordered feature and each line composed;
Where Wisdom sits a-squat, in starch disguise,
Like Dullness couch'd, to catch us by surprise.
And now he spreads around thy pomp of wig,
In owl-like pride of legal honors big;
That wig which once of curl on curl profuse,
In well-kept buckle stiff and smugly spruce,
Decked the plain pleader; then in nobler taste
With well-frizz'd bush the Attorney General graced,
And widely waving now with ampler flow,
Still with thy titles and thy fame shall grow.
Behold, Sir Lloyd; and while with fond delight
The dear resemblance feasts thy partial sight,
Smile if thou canst, and, smiling on this book,
Cast the glad omen of one favoring look."

"You, Sir Lloyd," said the dedication, "have ever been reputed the immediate author of the scrutiny. Your opinion is said to have been privately consulted on the framing of the return; and your public defense of the High Bailiff's proceeding notoriously furnished Mr. Rolle, and the other friends of the Minister, with all the little argument which they advanced against the objected exigency of the writ. You taught them to reverence that holy thing the conscience of a returning officer, above all law, precedent, analogy, public expediency, and the popular right of representation, to which our fathers erroneously paid religious respect." Then, after a long banter in prose upon his Honor for having slept in his stables and voted as the representative of his horses, this poetic effusion follows:—

"How shall the neighing kind thy deeds requite,
Great YAHOO champion of the HOUYHNHNM'S right?
In grateful memory may thy dock-tail pair
Unharmed convey thee with sure-footed care;
O! may they, gently pacing o'er the stones,
With no rude shock annoy thy batter'd bones,
Crush thy judicial cauliflow'r, and down
Shower the mix'd lard and powder o'er thy gown;
Or in unseemly wrinkles crush that band,
Fair work of fairer LADY KENYON'S hand.
No!—may the pious brutes with measured swing
Assist the friendly motion of the spring,
While golden dreams, of perquisites and fees
Employ thee, slumbering o'er thine own decrees!
But when the statesman in St. Stephen's walls
Thy country claims thee, and the Treasury calls
To pour thy splendid bile in bitter tide
On hardened sinners who with Fox divide,
Then may they, rattling on in jumbling trot,
With rage and jolting make thee doubly hot,
Fire thy Welsh blood, inflamed with zeal and leeks,
And kindle the red terrors of thy cheeks,
Till all thy gathered wrath in furious fit
On Rigby bursts—unless he votes with Pitt."

Mr. Fox being at last seated for Westminster, and having recovered heavy damages in an action against the High Bailiff for having granted and so long continued the scrutiny, at the end of the Rolliad there is a supposed letter to this corrupt functionary from Sir Lloyd Kenyon, apologizing for not paying these damages on account of his poverty, and particularly alluding to a story generally circulated, that he went to Court in a second-hand suit of clothes, bought by him from Lord Stormont's *valet de chambre*. The whole composition is very pungent, but I can only extract a few sentences from it:—

"The long and short of the matter is, that I am *wretched poor*—wretchedly so I do assure you in every sense and signification of the word. I have long borne the profitless incumbrance of nominal and ideal wealth. My income has been cruelly estimated at seven, or as some will have it, eight thousand pounds per annum. I shall save myself the mortification of denying that I am rich, and refer you to the constant habits and whole tenor of my life. The proof to my friends is easy. My tailor's bill for the last fifteen years is a record of the most indisputable authority. Malicious souls may direct

you, perhaps to Lord Stormont's *valet de chambre*, and vouch the anecdote that on the day when I kissed hands for my appointment to the office of Attorney General, I appeared in a laced waistcoat, that once belonged to his master. I *bought* the waistcoat, but despise the insinuation; nor is this the only instance in which I am obliged to diminish my wants, and apportion them to my very limited means. Lady K—— will be my witness that until my last appointment I was an utter stranger to the luxury of a pocket-handkerchief.[1]

"You are possessed of the circumstances which render any immediate assistance on my part wholly out of the question. But better times may soon arrive, and I will not fail you then. The present Chief Justice of the King's Bench cannot long retain his situation, and I will now reveal to you a great secret in the last arrangement of judicial offices. Know, then, that Sir Elijah Impey is the man fixed upon to preside in the chief seat of criminal and civil jurisprudence. I am to succeed him in Bengal, and then we may set the malice of juries at defiance. If they had given Fox as many diamonds by their verdict as they have pounds, rest assured that I am not a person likely to fail you after I shall have been there a little while, either through want of faith or want of means. Set your mind, therefore, at ease. As to the money, why if Pitt is determined to have nothing to do with it, and if nobody will pay it, I think the most advisable thing in your circumstances will be to pay it yourself. The contents of this letter will prove that I mean to reimburse you when I am able. For the present, nobody knows better than yourself, not even Lady K——, how ill matters stand with me, and that I find it utterly impossible to obey the dictates of my feelings.

"Your very affectionate friend
"And humble servant,
"L. K.

"*Lincoln's Inn Fields, June 20, 1786.*"

Sir Lloyd's efforts connected with the Westminster

[1] I have heard Jekyll assert that "Lord Kenyon never used a pocket-handkerchief in his life till he found one in the pocket of this very waistcoat, which pocket-handkerchief he ought to have returned, as it was not included in the bargain for the waistcoat."

Scrutiny brought him into such trouble and discredit, that he wisely resolved wholly to renounce politics and to stick to his judicial duties. For these he felt he was well qualified, whereas he declared that "legislation was a task to which he by no means thought himself equal." Accordingly, although he retained his seat in the House of Commons several years longer, he generally contented himself with a silent vote. However, he strenuously opposed a Bill for taking away the jurisdiction of the Ecclesiastical Courts in cases of defamation, which had been productive of much oppression to individuals and scandal to the church, and when asked to regulate, if he would not abolish, these proceedings, he said "he would not presume to blurt out his crude ideas of legislation lest they should fail of success." [1]

The last time of his addressing the House of Commons was in support of Sir Elijah Impey, but he rather damaged the defense by his intemperance, and gave Mr. Burke and Mr. Francis a triumph over him.[2]

Let us now attend him to the Rolls, where he appeared to much greater advantage. Being unable to read a single page of the Pandects, and being wholly unacquainted with the Roman civil law, even through the medium of translations and commentaries, he cannot be said to have been a great equity judge, but he was most familiarly acquainted with the practice and the doctrines of the Court of Chancery; he took very great care with every case that came before him, and he dispatched business with celerity and precision. He never seems to have written his judgments, and they cannot be praised for method, but they were very clear, and generally very sound.

The Reporters are Brown[3] and Cox,[4] and from them I extract a few of the most favorable specimens of his manner as Master of the Rolls. The question arose whether there ought to be a decree for the dissolution of a partnership where one of the partners was so far disordered in his mind as to be incapable of conducting the partnership business according to the terms of the

[1] 25 Parl. Hist. 1384, 1403; 26 Parl. Hist. 1004–5–8. [2] Ib. 1422–4.
[3] Brown's Rep. vols. i. and ii.
[4] Cox's Cases, vols. i. and ii.

articles of copartnership, although he could not be considered *non compos mentis*. As soon as the hearing of the cause was concluded, his Honor, without carrying the papers home with him or taking time to consider, spoke as follows:—

"This point is a new one, and if I conceived any industry of mine would throw any light upon the subject, I would take time to consider of my opinion, but as I do not know of any authority to guide me, and as I have made up my mind as to what I ought to do, I shall give my sentiments now. I think it may be laid down that where partners are to contribute skill and industry as well as capital, if one partner becomes unable to contribute that skill, a Court of Equity ought to interfere for both their sakes; for both have stakes in the partnership, and are interested in having it carried on properly, and the Court ought to see that the property of the party unable to take care of himself should be taken care of for him. It appears that few people care to leave the management of their property to other persons; and as a lunatic has no power of managing his own property, so a Court of Equity will not deliver it to persons to whom the party himself has not committed it. If therefore this gentleman continues in the same state of derangement in which he has been, I should have no difficulty in saying that the partnership ought to be dissolved, though there may be no precedent for the purpose. If, as is alleged, he has clearly recovered his senses and there is no danger of a relapse, it would be too much to dissolve the partnership. Every body knows that it is very frequent for persons once mad not to recover. I must therefore direct a new kind of inquiry, 'Whether Bennet is now in such a state of mind as to be able to conduct the business according to the articles of copartnership?' for if he has merely a ray of intellect, I ought not to reingraft him in his partnership, and that in mercy to both, for the property of both is concerned, and he who cannot dispose of his property by law, must be restrained."[1]

Persons entitled to an estate under a will upon the contingency of James Baron dying without lawful issue,

[1] Sayer *v.* Bennet, 1 Cox, 107.

applied for a writ *de ventre inspiciendo*, under these circumstances. He had married his servant maid, who in three weeks after the marriage was delivered of a dead child, and he dying soon after, she alleged herself to be again pregnant, whereas there was great reason to believe that she intended to palm a suppositious child upon the world for the purpose of defeating the remainder man. Objection was made that the writ could only be granted to persons claiming by *descent*.

Master of the Rolls: "At the time when the writ was first framed, which was coeval with the common law, the nature of the claim now made could not possibly exist; there was no disposition by will. Therefore land could only be claimed by descent. But the language of the writ may be varied according to the exigency of the case. Now what is the exigency of this case?—that the persons entitled to the property should not be defeated by a suppositious child. Disinherison or *exhæredatio* is not confined strictly to an heir. When there is *eadem ratio* there ought to be *eadem lex*. The question is, whether there be in this case circumstances sufficient to warrant me in granting the order? The situation and conduct of the wife may well alarm the parties interested. She was brought to bed in less than three weeks after the marriage, and doubts arising when soon after upon her husband's death she declared herself pregnant, she did not take proper measures to remove these doubts—which she should have done, if it were only for the sake of the child. I therefore clearly think that the writ should issue."[1]

In Halfhide *v.* Fenning, Sir Lloyd Kenyon pronounced a judgment which has often been overruled, but which I humbly apprehend rests on just principles. To a bill for an account between partners, the defendant pleaded that by the articles of partnership it was stipulated that any disputes arising between them respecting matters of account should be referred to arbitration.

Master of the Rolls: "There can be no doubt but that parties entering into an agreement that all disputes shall be referred to arbitration, are bound by such agreement.

[1] Ex parte Bellet, 1 Cox, 297.

The Legislature has countenanced arbitrations by enacting facilities to enforce the performance of awards. Where a cause is referred by rule of the Court of King's Bench, with a clause that no Bill in Equity shall be filed, that Court, considering this clause legal, grants an attachment for the violation of it. Such references are very advantageous to the parties, as arbitrators are more competent to the settling of complicated accounts than the officers of courts of law or equity. I ought to be convinced that arbitrators cannot or will not proceed before I entertain jurisdiction of the matter. I am satisfied that in the first instance recourse ought to be to those judges pointed out by the articles. If they cannot determine the controversy, they will remit it to this Court."[1]

Although we shall in vain look in his judgments at the Rolls for such masterly expositions of the principles of equity as delight us in those of his successor, Sir William Grant, and there were several of his decrees reversed, he despatched a great deal of business in a very creditable manner. Lord Eldon afterwards said to his son, "I am mistaken if, after I am gone, the Chancery Records do not prove that if I decided more than any of my predecessors in the same period of time, Sir Lloyd Kenyon beat us all." This compliment to Sir Lloyd Kenyon is well deserved, although the condition on which it is awarded cannot be affirmed, as Lord Eldon himself, in finally disposing of causes, was one of the slowest as well as one of the surest Judges who ever sat upon the bench.

The distinguished Welshman was now to exhibit his judicial powers on a wider stage. Lord Mansfield having presided thirty years as Chief Justice of the Court of King's Bench, was disabled by age and infirmity from

[1] 2 Brown, 336. The maxim that Courts of Law and Equity are not to be ousted of their jurisdiction by the agreement of the parties arose at a time when the profits of judges depended almost entirely upon the number of suits tried before them. This mode of remuneration accounts for the decisions whereby the statutes made to discourage frivolous actions by depriving the plaintiffs of costs were long rendered abortive.—December, 1849.

I am glad to think that by judgments of the Court of King's Bench, and of the House of Lords, in which I took a part, the right of parties to provide for the settlement of their disputes by arbitration is now fully established.—January, 1857.

longer doing the duties of his office, and he anxiously desired that Mr. Justice Buller should be appointed his successor. He intimated his willingness to resign if this arrangement should be acquiesced in. But it is said that the Prime Minister, when at the bar and going the Western Circuit, although Buller, the Judge of Assize, was very civil to him, had been much scandalized by observing his Lordship's demeanor in trying a great *Quo Warranto* case, which involved the right to return members of Parliament for a Cornish borough, contested by his family; and it is certainly known that Mr. Pitt not only had a good opinion of Sir Lloyd Kenyon's moral qualities, but felt deep gratitude for the sacrifices that his Honor had made in qualifying himself to vote for Sir Cecil Wray by sleeping in his own stables, and in zealously defending the "Scrutiny." Lord Mansfield was therefore told that the Master of the Rolls would be recommended to the King as Chief Justice. The notion was particularly disagreeable to the aged Peer. He not only sincerely believed that his favorite was much better qualified, but he had been told that the rival candidate had sneered at some recent decisions of the King's Bench which tended to bring about a fusion of law and equity, and that he was accustomed, like the Sergeants celebrated by Pope, to

"Shake his head at Murray as a wit."

For two years, while shut up in his villa at Caen Wood, Lord Mansfield retained his office of Chief Justice, in the hopes that Buller's growing popularity, while *de facto* presiding as the first common law Judge in Westminster Hall, might bear down all opposition, or that there might be a change of ministry—when his superior merit might be acknowledged and rewarded.

At last, hints were thrown out that this retention of the office was an abuse of the statute which made judges irremovable, and that the power of removing, reserved to the Crown on an address to the two Houses of Parliament, might be put in force for incapacity as well as for criminality.

Accordingly, on the 4th day of June, 1788, Lord Mansfield signed his resignation, and on the 9th of the same

month, being the last day of Trinity Term, 1788, Sir Lloyd Kenyon was sworn in as his successor. On the same day the new Chief Justice, by letters patent under the Great Seal, was created Baron Kenyon of Gredington, in the county of Flint. He sat at *nisi prius* immediately after, but he was not formally installed till the first day of the following Michaelmas Term.

CHAPTER XLIV.

LORD KENYON AS CHIEF JUSTICE OF THE KING'S BENCH.

ALTHOUGH Lord Kenyon afterwards acquired the full respect both of the legal profession and of the public, his promotion was in the first instance much disrelished. The gibes of the Rolliad circulated in society; he had offended several barristers by his hasty and uncourteous manner, and there was an illiberal apprehension that, because he had practiced while at the bar in a court of equity, he must be unfit to preside in a court of law. Buller, on the contrary, was not only "the Prince of Special Pleaders," and really had done the business of the King's Bench exceedingly well for two years, but he had been in the frequent habit of inviting all grades of the profession to the genial board, where they found flowing cups as well as flowing courtesy.

As I am henceforth to speak of the new Chief Justice almost exclusively in his judicial capacity, it may be convenient that I should at once proceed to the notice which I am called upon to take of him as a politician. He was introduced into the House of Peers in his robes between Lord Sydney and Lord Walsingham on the 26th of June, 1788.[1] Of course he was a steady sup-

[1] "June 26, 1788.

"Sir Lloyd Kenyon, Baronet, being, by Letters Patent bearing date the 9th June, 1788, in the twenty-seventh[a] year of his present Majesty, created Baron Kenyon of Gredington, in the county of Flint, was (in his robes) introduced between the Lord Sidney and the Lord Walsingham (also in their robes), the Gentleman Usher of the Black Rod and Garter King at Arms preceding. His Lordship on his knee presented his Patent to the Lord Chancellor at the Woolsack, who delivered it to the Clerk; and the same was read at the table. His Writ of Summons was also read as follows (videlicet):

"'George the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth: To Our right trusty and well-beloved Counsellor Lloyd Kenyon, of Gredington, in our

[a] Sic.

porter of the Government, although he very properly abstained from again making himself prominent as a political partisan.

In a debate which soon after arose upon the insanity of George III., Lord Porchester, to enforce the necessity of immediately restoring the exercise of the royal authority by addressing the Prince of Wales to act as Regent, stated—

"That on Monday last two men had been butchered by a public execution, because the door of mercy was barred against them, and that these unfortunate convicts had been deprived of all opportunity of applying either for a pardon or for a temporary reprieve, although it had been laid down by Judge Blackstone that if a convict, after receiving sentence of death, loses his senses, execution is stayed, because, if he had retained his senses, he might have urged some plea to induce the Crown to remit or to mitigate his punishment."

Lord Kenyon: "It would ill become me to listen with silent indifference to a charge of so serious a nature, and urged with such vehemence against a judge. The judge who tried these criminals is now the party accused. If on the trial of a person convicted of a capital crime, circumstances come out which warrant the judge in supposing that the verdict is wrong, it is his duty to respite the convict. If anything favorable appeared on the trial of the two persons executed on Monday, the judge who

County of Flint, Chevalier, greeting: Whereas Our Parliament for arduous and urgent Affairs concerning Us, the State and Defense of Our Kingdom of Great Britain, and the Church, is now met at Our City of Westminster; We, strictly enjoining, command you under the Faith and Allegiance by which you are bound to Us, that considering the Difficulty of the said Affairs and Dangers impending, all Excuses being laid aside, you be personally present at Our aforesaid Parliament with Us, and with the Prelates, Nobles, and Peers of our said Kingdom, to treat of the aforesaid Affairs, and to give your Advice, and this you may in no wise omit as you tender Us and Our Honour, and the Safety and Defense of the said Kingdom and Church, and the Despatch of the said Affairs.

"'Witness Ourself at Westminster, the Ninth Day of June. in the Twenty-eighth Year of Our Reign. YORKE.'

"Then his Lordship took the Oaths, and made and subscribed the Declaration; and also took and subscribed the Oath of Abjuration, pursuant to the Statutes, and was afterwards placed on the Lower end of the Baron's Bench.

"Garter King at Arms delivered in at the Table his Lordship's pedigree, pursuant to the standing Order."—38 Journal, 249

tried them ought to have respited them; and if he neglected his duty, they have not been butchered but murdered by him, which is a much higher offense. The judge guilty of such an act of criminal neglect, instead of being allowed to go in state to Westminster Hall next morning, ought to have been seized in his fur robes, dragged from the seat of justice, and hurried to that dungeon in which the two unfortunate men had lingered the last hours of their existence. I therefore call upon the noble lord to make good his charge, to name the judge, and to bring the real culprit to condign punishment."

Lord Porchester: "I bring no imputation on any judge. The judge who tried these two unfortunate prisoners is my own near relation, and a most honorable, enlightened, and humane magistrate. But because the evidence against them on their trial might appear quite sufficient, does it follow that they might not have good reason to apply for pardon or reprieve, and ought they to have been hurried out of the world, while, contrary to our laws and our constitution, the power of extending mercy to them was suspended?"

Lord Kenyon returned no answer; but I apprehend he might have said, that in truth the ministers of the Crown continued to exercise the powers of their several offices; that a pardon or respite, if fit to be granted, would have been directed by the Secretary of State as effectually as if the King had been in the full possession of his faculties.[1]

By this maiden speech our Chief Justice did not make a favorable impression, and he was so little satisfied with it himself, that he never again opened his mouth in the House of Lords till the question arose whether the impeachment of Mr. Hastings was abated by the dissolution of Parliament. Although so familiarly acquainted with every branch of our municipal law, he knew very little of the law of Parliament, and it would have been better if on this occasion he had remained silent. He apologized for his defective information on the subject, as his professional engagements had prevented him from reading the Report of the Committee appointed to

[1] 27 Parl. Hist. 1065.

search for precedents. He then strongly took the side of *abatement*. "If dry legal reasoning," said he, "and a strict attention to forms of practice (on which substantial justice depends) be unpleasant to your lordships, you had better not call on lawyers for their opinions, but either send them out of the House, or not allow them to babble here." In commenting on the opinion of Lord Hale, he fell into the mistake of asserting, "as an undoubted fact, that this great judge would never sit on a criminal case during the Commonwealth, because he doubted the authority of Cromwell," whereas Hale undoubtedly took the oath to the Republican Government, and, till he had a difference with the Protector, tried criminal as well as civil cases without any scruple.[1] Good sense prevailed, and the quibble of *abatement* was crushed by a majority of 60 to 18.[2]

Lord Kenyon strongly opposed the Bill to prevent vexatious suits for small tithes, saying that "he could not consider it any oppression that persons should be imprisoned for sums as low as one shilling, for if any were so obstinate as to refuse the payment of legal dues. the law ought to be enforced. He, therefore, would not concur in pulling down a fabric which had stood so many years, and which was the chief support of the inferior clergy."[3]

Our Chief Justice then came forward to oppose Mr. Fox's Libel Bill, which *declared* that juries had a right to determine whether the writing charged to be libelous is of an innocent or criminal character. "He expressed his dislike of the loose and vague manner in which the Bill was worded. He pronounced its principle to be a direct contradiction to the practice of a long series of years, and that it was totally inadequate to the purpose it was meant to effect. It tended to alter the established law of the realm, and was a dangerous innovation upon the constitution. The only doubt was whether the truth should be taken as part of the defense, and if this Bill were to pass, a clause to determine that point would be absolutely necessary. He thought the Judges the only men who could give the necessary information, and

[1] Ante, vol. ii. p. 187. [2] 29 Parl. Hist., 535.
[3] 28 Parl. Hist. 218.

he should move that the following questions be put to them: '1. On the trial of an indictment for libel, is the criminality or innocence of the paper set forth as the libel matter of fact or matter of law? 2. Is the truth or falsehood of the paper material, or to be left to the jury on a trial?'"

The two questions were referred to the Judges, who unanimously answered that "it was for the Court alone, and not for the jury, to determine whether the paper charged to be a libel was criminal or innocent," and "that proof of the truth could not be admitted; nay, that the doctrine for excluding it was so firmly settled and so essentially necessary for the maintenance of the King's peace and the good order of society, that it cannot be drawn into debate."[1]

On the motion for the second reading of the Bill, Lord Camden and Lord Loughborough still advised the House to pass it; but it would appear that Lord Kenyon would have remained silent had not Lord Stanhope made some observations which he supposed reflected upon him. This eccentric Peer not only found fault with the direction given to the jury at the famous trial of the King *v.* Stockdale, but, to illustrate the injustice which might be done by referring the question of "libel or no libel" to the Judges instead of the jury, put the case of there being an indictment for an alleged libel, in denouncing the prosecution as "a great bore."

"If referred to the jury," said his Lordship, "they would immediately say: 'This is no imputation on moral character. We who attend in courts of justice know well that a person may be a *great bore* who is very desirous of discharging his duty, and is only very narrow-minded, dull, and tedious. Therefore we find a verdict of *not guilty.*' But if treated as a mere question of law, the Judges would say: 'We read nothing in our books of a *bore* so spelt. Lord Coke says, the spelling of words signifieth naught. We must consider that the libel denounces the prosecutor as *a great boar.* Now Manwood de Foresta lays it down that 'a *boar* is a beast of chase of an evil and ungovernable nature, the which

[1] 29 Parl. Hist. 1361.

it is lawful to follow and to kill.' Now, whereas the libel avers that the prosecutor is 'a great boar,' we must take this *in mitiori sensu*, and suppose the charge to be, not that the prosecutor actually *is* a great boar, but only that he has the qualities of a great boar. But these render him unfit for society as much as if he were infected with certain disorders, to impute which is libelous and actionable. A 'great boar' is as much as to say a 'wild boar,' which may lawfully be slain by those whom it attacks, even in the purlieus of a royal forest. Therefore we hold the defendant to be guilty, and we sentence him to be hanged.'"

Lord Kenyon: "After the unprovoked attack that has been made upon me, I must appear the meanest of mankind in your Lordships' estimation if I do not endeavor to defend myself. Every man cannot command the great abilities and the great eloquence which have been exhibited here this day; but there is one thing in every man's power, viz., *veracity*. The noble Earl, instead of seeking to obtain true information, chooses rather to attack me on false facts. In Stockdale's case, Mr. Erskine expressed himself quite satisfied with my direction, and I entirely approved of the verdict. The noble Earl has tried to cover with ridicule all that is held sacred. I honor trial by jury as much as any man; but let the jury be confined to their proper province, the trial of facts. I conjure your Lordships, therefore, to let the law remain as it is, with all its guards and fences about it. A man sitting on the bench suffers many an uneasy moment, and is obliged to consult his conscience to enable him to do his duty. Great are the advantages from the question of *libel or no libel* remaining exclusively with the Judges. If a man were indicted for publishing a paper which inculcated virtue and loyalty, instead of vice and sedition, I would not direct the jury to find a verdict against such a defendant. Cases have occurred where the jury have found the defendant *guilty*, and the Judges have stepped in and rescued him. As for the noble Earl to dabble in law, as he has attempted, it is as preposterous as if I were to quote Sir Isaac Newton's PRINCIPIA, or to go into a dissertation on Euclid's Prob-

lems.[1] The noble Earl's speech deserves no other notice, for instead of being proper for your Lordships to hear, it was rather calculated to inflame the lowest dregs of the people and to put them out of humor with the public administration of justice."[2]

However, from the noble support given to the bill by Mr. Pitt's government, it passed, and it has operated most beneficially. Thanks to the liberality of a succeeding age another bill has passed, admitting evidence of the truth of the charge; and this too has greatly promoted "the King's peace and the good order of society," which the judges said the mere mention of such a measure would fatally subvert.[3]

For the five following years, perhaps the most interesting in our parliamentary annals, Lord Kenyon appears never to have opened his lips in the House of Peers, and I find him only once more addressing this assembly, although he very regularly voted or gave his proxy in favor of the Government.

Lord Moira had brought in a bill to abolish imprisonment for debt. Among other petitions in favor of the bill, there was one detailing the abuses supposed to prevail in the King's Bench prison, and asserting that from the sale of beer and spirits to the debtors, large profits were derived by the Lord Chief Justice. The noble Lord who introduced the bill declared that he believed that these charges were false and calumnious.

Lord Kenyon, rising with evident agitation, spoke as follows:

"My Lords, when I came down to the House this day I did not know whether I should not be dragged to your Lordships' bar as a criminal. I beg your Lordships' indulgence, therefore, while I express my injured feelings. It is most true that the vile charge against me alluded to by the noble Lord has excited my grief and indignation. Who would have supposed that there was a single man in the kingdom base enough to believe me guilty of such misconduct, and barefaced enough to put such

[1] Sic. He seems to have thought it great presumption for a lawyer to pretend to have crossed the *Pons Asinorum*.

[2] 29 Parl. Hist. 1294, 1431.

[3] Lord Campbell's Libel Bill, 6 & 7 Victoria, c. 96.

an accusation upon paper? Although I am not now upon my oath, I speak under a sense of the duty I owe both to God and man, and I take this opportunity of solemnly declaring, as I hope for salvation at the day of judgment from that all-just and benevolent Being to whom I am to answer for my conduct in this life, that every syllable of the accusation is utterly false. I have never received any profit or emolument from the abuses which have been mentioned, yet a slanderer asserts that they were for my profit and emolument sanctioned by me in my judicial capacity, and I am represented as avariciously sharing the plunder with jailers, turnkeys, and tipstaves. Under my present feelings I most earnestly beseech and implore your Lordships to appoint a committee to inquire into my conduct, and I pledge myself to adduce evidence before that committee to prove what I now solemnly aver. But for the public I am clearly of opinion that imprisonment for debt should continue. I insist that the law of arrest, as it now prevails, has conduced in an essential degree to the increase of commerce and the extension of trade. The most serious consequences would follow if the security which it offers to the creditor were weakened. It is impossible altogether to prevent abuses, but when they come to my knowledge they shall never be countenanced, nor the authors of them suffered to go unpunished."[1]

The Bill was thrown out by a majority of 37 to 21, and did not pass till above forty years afterwards, when I had the honor to re-introduce it.

Henceforth Lord Kenyon, when attacked, instead of defending himself in debate in the House of Lords, "changed the venue" to the Court of King's Bench, where he could both indulge in a little self-laudation, and retaliate upon his accusers without any danger of a reply.

He never brought forward any Bill for the amendment of the law, nor did he even attend so the judicial business of the House of Lords. This cannot be celebrated as a very glorious parliamentary career. Indeed if a Chief Justice of the King's Bench is to do so little

[1] 33 Parl. Hist. 181.

for the public as a peer, there seems no reason why he should be ennobled. His official rank is abundantly sufficient to insure respect to a man of character and ability, and a peerage is conferred upon him, not that he may frank letters or walk in a procession, but that he may assist in the supreme Court of Appeal for the empire, and, as a legislator, he may strive to improve our laws and institutions.

I am much pleased that we are now to see Lord Kenyon presiding on his tribunal in Westminster Hall. Here he appeared to infinitely greater advantage. Although not free from considerable defects, in spite of them he turned out to be a very eminent common law Judge. His thorough acquaintance with his craft, his intuitive quickness in seeing all the bearings of the most complicated case, and his faculty of at once availing himself of all his legal resources, gave him a decided advantage over competitors who were elegant scholars, and were embellished by scientific acquirements. He had a most earnest desire to do what was right; his ambition was to dispose satisfactorily of the business of his Court, and to this object he devoted his undivided energies.

However, the misfortune of his defective education now became more conspicuous, for he had not acquired enough general knowledge to make him ashamed or sensible of his ignorance, and without the slightest misgiving he blurted out observations which exposed him to ridicule. He was particularly fond of quoting a few scraps of Latin which he had picked up at school or in the attorney's office, without being aware of their literal meaning. In addition to the "modus in rebus,"[1] he would say, that in advancing to a right conclusion, he was determined *stare super antiquas vias*, and when he declared that there was palpable fraud in a case, he would add "apparently *latet anguis in herbâ*." At last George III., one day at a levee, said to him, "My Lord, by all I can hear it would be well if you would stick to your good law and leave off your bad Latin;" but this advice, notwithstanding his extraordinary loyalty, he could not be induced to follow.

[1] Ante, p. 38, his observations in Dean of St. Asaph's case.

A more serious obstacle to the dignified discharge of his judicial duties arose from his hasty and ungovernable temper. He is said to have surprised his friends, for a few weeks after taking his seat as Chief Justice, with a show of courtesy, but he soon gave up the unequal contest, and his brother judges, the bar, and the solicitors, were by turns the victims of his choler. We have the following account of his demeanor in court from a barrister who practiced under him all the time he was Chief Justice:—

"The supercilious reception which he gave to the opinions of the other judges was not that merely of neglect, it bordered on contempt. He predominated over them with high ascendency. They very rarely differed from him; if they did, their opinions were received with a coldness which stooped not to reply, or, if noticed, were accompanied with angry observations. He was irritated by contradiction, and impatient even of an expression of doubt of the infallible rectitude of what he had delivered as his judgment. In differing with his predecessors he used no soft or measured language. Having occasion to contravene a dictum of Chief Justice Holt, 'he wondered that so great a judge should have descended to petty quibbles to overturn law and justice;' and when a saying of Lord Mansfield was cited respecting the right to recover a total loss on a valued policy, with a small interest actually on board, he declared that 'this was very loose talking, and should not be ratified by him.' When a new trial was moved for against a ruling of his own, on the ground of misdirection, he would scarce give time to his colleagues to deliberate together, but at once burst out: 'If the rest of the court entertain any doubt, the case may be farther considered, but I am bound to give the same opinion I formerly gave: not because I gave that opinion before, but because I am convinced by the reasoning that led to it.' Whenever his brother judges ventured to differ from and overrule his decisions (there were scarcely a dozen cases in the course of fourteen years which called for this exhibition of fortitude), his manner evinced as much testiness as if he had received a personal affront. If a word escaped from a counsel not quite in accord-

ance with his sentiments, his temper blazed into a flame which could scarcely be subdued by humility. On these occasions he gave loose to an unchecked effusion of intemperate expression, and his language was not chastened by the strict rule of good breeding. Mr. Law, when leader of the Northern Circuit, having moved rather pertinaciously for a new trial, Lord Kenyon thus concluded his judgment: 'You will take nothing by your motion but the satisfaction of having aired your brief once more.' Nor while thus offensive to those more advanced in the profession, could he claim, as a set off, the merit of being gracious and encouraging to the junior portion of the bar. An irregular application, though it proceeded from inexperience only, was received without the indulgence which was due to it; if made by the more experienced, it was received with contumely. He would say, 'You know you cannot succeed. You do not expect to succeed.'"

A graver fault was his indulging in partialities for, and antipathies against particular barristers. Erskine was his pet; he delighted to decide in favor of this popular advocate, and when obliged to overrule him, he would give his head a good-natured shake, and say, with a smile, "It won't do, Mr. Erskine, it won't do." Law, on the contrary, was so snubbed by him that, at last, he openly complained of his constant hostility in the well-known quotation:—

> "Non me tua fervida terrent
> Dicta, ferox [pointing to Erskine]; DI me terrent—
> [Pointing to the bench]—et JUPITER *hostis*."

Such was the general opinion respecting the infirmity of his temper that the following anecdote was circulated and believed, although the epigrammatic point, and the rudeness which it imputes to George III., were equally at variance with the character of that royal personage: "Lord Kenyon being at the levee, soon after an extraordinary explosion of ill humor in the Court of King's Bench, his Majesty said to him, 'My Lord Chief Justice, I hear that you have lost your temper, and, from my great regard for you, I am very glad to hear it, for I hope you will find a better one.'"

All these failings, nevertheless, were much more than counterbalanced by his professional learning, his energy, and his probity, so that he was not only admired by common jurymen, who were on a level with him as to general acquirements, and with whose feelings and prejudices he sympathized, but his brother judges, in all the courts at Westminster, owned his superiority, the bar succumbed to his despotic sway, and the public, while they laughed at his peculiarities, confided in him and honored him. I can hardly point out any principle on which he openly professed to differ from his predecessor, except the rigid enforcement of the rule that, in the possessory action of ejectment, the *legal estate* shall always prevail. Lord Mansfield had not only very properly decided that the tenant may not dispute the title of the lessor under whom he occupies, and that satisfied terms may be presumed to be surrendered, but in some cases he had gone farther, and held, where there was no estoppel, that unsatisfied outstanding terms should not bar an ejectment if the party bringing the ejectment would agree to recover, and to hold the premises subject to the uses of these terms.[1] But Lord Kenyon overruled Buller, who followed the doctrine of Lord Mansfield, and, supported by Ashurst and Grose, held that a court of law was wholly incompetent to consider *trusts*, and, there being no estoppel, that an outstanding term, if there was no sufficient ground for presuming it to be surrendered, was universally a complete bar to the ejectment.[2]

He likewise induced the Court to hold, against a decision of Lord Mansfield, that an action cannot be maintained in a court of law for a pecuniary legacy, although the executors have assets in their hands from which it might be paid, as a Court of Equity has the means of determining such questions much more satisfactorily, and of doing justice to all who may be interested in the fund.[3] With still more doubtful policy he overturned some decisions of Lord Mansfield respecting actions by and against married women separated from their hus-

[1] Doe dem. Bristow *v.* Pegge, 1 T. R. 758 n.
[2] Doe dem. Hodsden *v.* Staple.
Deeks *v.* Strutt, 5 T. R. 690.

bands by a divorce *a mensa et thoro*, or under articles of separation with property settled upon them, or where they had declared themselves to be, and had acted as single women, the rule being now laid down that a married woman cannot bring an action or be impleaded as a *feme sole* while the relation of marriage subsists—although the common law furnished the analogy of a married woman acquiring a separate character by the exile of her husband, or by his entering into religion.[1]

I am not aware of any other decision to justify the oft-repeated assertion that "Lord Kenyon restored the simplicity and rigor of the common law."[2]

I shall now proceed to mention some of the most remarkable cases which came before him as Chief Justice of the King's Bench.

Soon after his elevation, he tried the famous ex-officio information of *Rex* v. *Stockdale*, the prosecution having been ordered by the House of Commons for a supposed libel upon that assembly, in the shape of a defense of Mr. Hastings. The Chief Justice's direction to the jury on this occasion was wholly unexceptionable; but considering that the Bill had not yet passed declaring the right of juries to judge of the character and tendency of papers charged as libelous, as well as the act of publication, I am quite at a loss to reconcile his direction with the opinion he peremptorily gave in the House of Lords, and often repeated afterwards, that "libel or no libel" was a pure question of law, to be decided by the Court. He had strongly sided with the defenders of Hastings, and very much approved of the sentiments which the prosecuted pamphlet expressed—thinking that the House of Commons had been guilty of oppression and vexation in the manner in which they had instituted and conducted the impeachment. Perhaps his wish for an acquittal might have unconsciously biassed his judgment But, however this may be, he distinctly told the

[1] Marshall *v.* Rutton, 8 T. R. 545. One of the most remarkable instances of an action by a married woman is that by Lady Bellknappe (wife of the Lord Chief Justice), when her husband had been transported to Ireland. "Lives of Chief Justices," vol. i. p. 116.

[2] The observation would have been more just, that "he successfully resisted Lord Mansfield's attempts to bring about a fusion of Law and Equity."

jury that they were to consider whether the sense which the Attorney General had affixed to the passages set out in the information was fairly affixed to them. According to the old doctrine, the jury were to consider whether the innuendoes in the information were made out, such as that "H—— of C——" meant *House of Commons*, or that "the K——" meant *our Sovereign Lord the King*, and nothing further. But here the Lord Chief Justice Kenyon said:—

"You must make up your minds that this was meant as an aspersion upon the House of Commons, and I admit that you are not bound to confine your inquiry to these detached passages which the Attorney General has selected as offensive. But let me, on the other side, warn you that though there may be much good writing, good argument, morality and humanity in many parts of it, yet, if there are offensive passages, the good part will not sanctify the bad part. You have a right to look at the whole book, and, if you find the passages, selected by the Attorney General do not bear the sense imputed to them, the defendant has a right to be acquitted, and God forbid he should be convicted. You will always be guided by this—that where the tendency is ambiguous and doubtful, the inclination of your judgment should be on the side of innocence. It is not for me to comment further upon the pamphlet: my duty is fulfilled when I point out to you what the questions are proposed for your determination; the result is yours, and yours only."

The jury, after two hours deliberation, found a verdict of NOT GUILTY; but, according to the doctrine laid down unanimously by the Judges in the House of Lords, the defendant ought certainly to have been convicted; for the act of publication was admitted, and the technical *innuendoes* were proved; so that the acquittal proceeded upon the ground that the intention of the pamphlet was fairly to discuss the merits of the impeachment, not to asperse the House of Commons, or, in other words, that the pamphlet was not a libel, the jury, with the consent of the Judge, having exercised the power afterwards conferred on juries by Mr. Fox's Libel Bill.[1]

[1] 22 St. Tr. 237–308.

When the French Revolution broke out, and the reign of terror began in England, I am sorry to say that Lord Kenyon strongly abetted the system of repressing Jacobin principles by ill-advised prosecutions and cruel punishments, rather than by amending our laws and by the mild and dignified administration of justice. The first case which came before him, arising out of the revolutionary movement, was an *ex officio* information by the Attorney General against Dufleur and Lloyd, two prisoners confined for debt in the Fleet Prison, charging them with a conspiracy to escape and to subvert the Government, because they had affixed upon the gate of the prison a paper containing the following ADVERTISEMENT:—

"This House to Let; peaceable possession will be given on or before the 1st of January, 1793, being the commencement of the first year of liberty in Great Britain."

This pasquinade against imprisonment for debt, composed for the amusement of the debtors, the Chief Justice gravely treated as a seditious libel; and the defendants, being found guilty, were sentenced to stand in the pillory.[1]

The trial and punishment of John Frost, the attorney, were still more discreditable. While in a coffee house, under the excitement of wine, he was overheard to use some indiscreet expressions respecting the French Republic and monarchical form of government. Notwithstanding an admirable defense by Erskine, he was found guilty of sedition, and the senior Puisne Judge having pronounced sentence "that he should be imprisoned six months in Newgate, that he should stand on the pillory at Charing Cross, and find sureties for his good behavior for five years," Lord Kenyon, C. J., added with great eagerness, "and also be struck off the rolls of attorneys of this Court," whereby he was to be rendered infamous, and to be irretrievably ruined, so that death really would have been a milder sentence.[2]

The next political case which came before him was remarkable as being the first prosecution for libel under Mr. Fox's Libel Bill, and to the Chief Justice's shame it must be recorded that he misconstrued and perverted

[1] 22 St. Tr 317–358.

[2] Ib. 471–522.

this noble law—establishing a precedent which was followed for near half a century, to the manifest grievance of the accused.

An information was filed by the Attorney General against the proprietor and printer of the "Morning Chronicle" for publishing in that journal certain resolutions of a public meeting held at Derby, in favor of parliamentary reform, and against abuses in the government, based upon this principle:—"That all true government is instituted for the general good, is legalized by the general will, and all its actions are or ought to be directed for the general happiness and prosperity of all honest citizens."

Lord Kenyon (to the jury): "A great deal has been said by the counsel for the defendants about parliamentary reform. Before I would pull down the fabric or presume to disturb one stone in the structure I would consider what those benefits are which it seeks. I should be a little afraid that when the water was let out, nobody could tell me how to stop it; if the lion was once let into the house, who would be found to shut the door? The merits or demerits of the late law respecting the trial of libel I shall not enter into. It is enough for me that it is the law of the land, which by my oath I am bound to give effect to, and it commands me to state to juries what my opinion is respecting this or any other paper brought into judgment before them. When these resolutions appeared in the newspaper of the defendants the times were most gloomy—the country was torn to its center by emissaries from France. It was a notorious fact—every man knows it—I could neither open my eyes nor my ears without seeing or hearing them. Weighing thus all the circumstances—that the paper was published when those emissaries were spreading their horrid doctrines; and believing there was a great gloominess in the country—and I must shut my eyes and ears if I did not believe that there was;—believing also that there were emissaries from France wishing to spread the maxims prevalent in that country in this,—believing that the minds of the people in this country were agitated by these political topics of which the mass of the population never can form a true judgment, and

reading this paper, which appears to be calculated to put the people in a state of discontent with everything done in this country,—*I am bound by my oath to answer that I think this paper was published with a wicked, malicious intent to vilify the Government and to make the people discontented with the constitution under which they live.* This is the matter charged in the information;—that it was done with a view to vilify the constitution, the laws, and the government of this country, and to infuse into the minds of his Majesty's subjects a belief that they were oppressed, *and on this ground I consider it as a gross and seditious libel.* It is not sufficient that there should be in this paper detached good morals in part of it, unless they give an explanation of the rest. There may be morality and virtue in this paper; and yet, apparently *latet anguis in herbâ.* There may be much that is good in it, and yet there may be much to censure. I have told you my opinion. Gentlemen, the constitution has entrusted it to you, and it is your duty to have only one point in view. Without fear, favor, or affection, without regard either to the prosecutor or defendants, look at the question before you, and on that decide on the guilt or innocence of the defendants."

The Act of Parliament[1] only required the Judge to deliver his opinion in point of law to the jury on the trial of libel "in like manner as in other criminal cases," and therefore he was only bound to tell the jury that if from the contents of the paper and the circumstances under which it was published it was meant to vilify the government and constitution and to infuse discontent into the minds of the people, it was in point of law a libel, without taking upon himself as a matter of fact to determine that such was the intent.[2]

The jury, after two hours' deliberation, found a verdict of GUILTY OF PUBLISHING, BUT WITH NO MALICIOUS INTENT; and being told that this verdict could not be received—after sitting up all night, they next morning returned a general verdict of NOT GUILTY.[3]

[1] 32 Geo. III. c. 60, s. 2.

[2] I myself heard a succeeding Judge say, "The Act requires me to declare to you my opinion in point of law, and I am clearly of opinion that this is a most wicked, seditious, and diabolical libel."

[3] Rex *v.* Perry and Lambert, 22 St. Tr. 953-1020.

When it was resolved to charge Hardy, Horne Tooke, and other reforming associates of Mr. Pitt with the crime of high treason because they had steadily and zealously adhered to the cause which he had deserted, the plan at first was that they should be tried before Lord Kenyon in the Court of King's Bench; but some apprehension was entertained of his intemperance of manner, and they were arraigned at the Old Bailey before that quiet and safe Judge, Chief Justice Eyre. But William Stone, the London merchant, who was very fairly and constitutionally accused of "adhering to the King's enemies" by writing letters inviting the French to invade England, was tried at the King's Bench bar; and the case being quite unconnected with parliamentary reform or party politics of any sort, Lord Kenyon presided on this occasion with great moderation. He thus laid down the law:—

"If a communication is made to a government at war with England which may tend to be of any assistance to that government in annoying us or defending themselves, such communication is beyond all controversy high treason. It will be for the jury to look at the papers given in evidence, and consider whether they were meant to assist the French in the invasion of this country. This is what upon my oath I am bound to state to you; if I misstate it, I shall be corrected by the learned Judges who sit near me; and I shall not be sorry to be interrupted if I state anything which renders interruption necessary, because it never comes too late when the blood of a fellow-subject is at stake; but I am bound to do it: it is not a pleasant task; but, thus circumstanced, unpleasant as the task is to any man of feeling, I must meet my situation and summon up my fortitude as well as I can to discharge it as well as my faculties will permit me."

The letters were very culpable, but Erskine raised a doubt in the minds of the jury whether they had been written with any treasonable intent, and, after long deliberation, there was a verdict of *not guilty*.[1]

When the trial came on of the very foolish prosecution moved by the Whigs in the House of Commons

[1] 25 St. Tr. 1155-1438.

against John Reeve for a libel on the English constitution, because he had written that "monarchy is the trunk from which the two Houses of Parliament had sprung as branches," Lord Kenyon thus rather boastfully paraded his constitutional learning:—

"Sufficient knowledge of the constitution is a degree of knowledge which we all of us have in our several stations—at least every body who has had a liberal education; it is a knowledge we have all of us probably about us; we all know that the legislature of this country consists in the King, the Lords, and the Commons; that the executive power rests with the King alone, liable to be superintended and to be corrected, too, by the two Houses of Parliament; not to be corrected in the King's person, because that, by the constitution, is inviolable, 'the King can do no wrong,' but to be corrected in those ministers through whose agency active government is carried on."

He thus concluded, making a new noun-substantive:—

"The *quo animo*, which the prosecution imputes to the defendant, is this, that he by this publication intended to raise and excite jealousies and divisions among the liege subjects of our Lord the King, and to alienate their affections from the government by King, Lords, and Commons, now duly and happily established by law in this country, and to destroy and subvert the true principles and the free constitution of the government of the realm. The Attorney General says, the pamphlet intended to impress upon the public that the regal power and government of this realm might, consistently with the freedom of this realm as by law declared and established, be carried on in all its functions by the King of this realm, although the two Houses of Parliament should be suppressed and abolished. This is the *quo animo* which is imputed to this person, and you are to find whether your consciences are satisfied that these were the motives which influenced him in the publication."

In substance this was a very sound direction; and, notwithstanding his recent construction of the late act of Parliament in the case of Rex *v.* Perry, he abstained

from telling the jury whether, in his opinion, the pamphlet was a libel or not. The jury said, "We are of opinion that the pamphlet is a very improper publication, but that the defendant's motives were not such as are laid in the information, and therefore we find him NOT GUILTY.'[1]

Lord Kenyon's extreme moderation in this case some accounted for from the circumstance that the sentiments contained in the supposed libel agreed very much with his own. When writers, who had taken the other side of the question, were prosecuted, he was more and more furious against them.

The very learned, though wrong-headed, Gilbert Wakefield, a clergyman of the Church of England, who said he was a Reformer, like his divine Master, being prosecuted by the Attorney General as author of a pamphlet supposed to have a democratical tendency, and being gallantly defended by Erskine, who urged that a little indulgence might be shown to the eccentricities of one of the finest scholars of whom England could boast, Lord Kenyon thus summed up to the jury:—

"The defendant has stated that his conduct is founded upon the doctrines promulgated by the Saviour; but surely he has this day shown himself to be very little influenced by them. Such are not the feelings and the conduct to which the Christian religion gives birth. *Ingenuas didicisse fideliter artes emollit mores* is an expression which has often been used, but the experience of this case shows that it is not always correct."

The defendant, speaking in mitigation of punishment, said—

> "Carmina tantum
> Nostra valent, Lycida! tela inter Martia quantum
> Chaonias dicunt, aquila veniente, columbas."

Accordingly he was sentenced to two years' imprisonment in Dorchester jail, and to find sureties for his good behavior for five years longer.[2]

Still more censurable was the conviction of a Mr. Cuthill, a most respectable classical bookseller. Although he had published Gilbert Wakefield's other works, he

[1] 26 St. Tr. 529-596.

[2] 27 St. Tr. 679-760.

had declined to publish this pamphlet because it was not in his line; but when it had been published by another bookseller, a few copies of it were sold in the defendant's shop by his servant without his authority or knowledge:—

Lord Kenyon: "Before I enter upon the cause itself, I beg leave to say, that I see no good in what has lately taken place in the affairs of another country; I see no good in the murder of an innocent monarch; I see no good in the massacre of tens of thousands of the subjects of that innocent monarch; I see no good in the abolition of Christianity; I see no good in the depredations made upon commercial property; I see no good in the overthrow and utter ruin of whole kingdoms, states, and countries; I see no good in the destruction of the Swiss, a brave and virtuous people. In all these things I confess that I see no good."

He then spoke very disparagingly of the late Libel Bill, saying that he had strenuously opposed it as it passed through Parliament, adding—

"It was a race of popularity between two seemingly contending parties;[1] but in this measure both parties chose to run amicably together."

Having stated that the evidence was abundantly sufficient to fix the defendant, he thus concluded:—

"If you think it is possible to keep government together with such publications passing through the hands of the people, you will say so by your verdict, and pronounce that this is not a libel; but in my opinion that would be the way to shake all law, all morality, all order, and all religion in society. The point is most momentous in this country, and you are now to determine upon it, and to say whether the law is to be preserved, or whether everything should be thrown into confusion."

The Defendant was immediately found guilty; but the usage he had experiened on his trial caused such scandal that he was afterwards let off on paying a nominal fine.[2]

[1] Meaning *Foxites* and *Pittites*.

[2] In his violent address to the jury in this case Lord Kenyon alludes to the state of affairs then subsisting in Europe, which, although it cannot justify his conduct in the trial of prosecutions for sedition, ought very much to

The proprietor of the Courier newspaper did not escape so easily, although his offence was equally venial. He had copied into his journal a paragraph stating the undoubted truth, that Paul I., Emperor of Russia, had made himself odious and ridiculous to his own subjects by forbidding the exportation of timber and other Russian produce from his dominions to Great Britain. Erskine, for the Defendant, contended that the supposed libel was a fair comment upon a tyrannical and foolish act, and was meant to vindicate the rights of Englishmen, not to insult foreigners.

Lord Kenyon: "What could have induced the Princes of Europe to the conduct some of them have pursued, I will not venture to investigate; but, sitting in a court of law, I am bound to say that it does not absolve states from enforcing a decent respect to the magistracies of each other, and to the persons of sovereigns executing the law. All governments rest mainly on public opinion, and to that of his own subjects every wise sovereign will look. Between the sovereign and the people of every country there is an express or implied compact for a government of justice. Yet the Emperor of Russia is here said to be a transgressor of all law. In private life a similar charge would be the foundation of an action for damages; and why is a great sovereign to be deprived of all remedy? It is for you, gentlemen of the jury, who come out of that rank which enables you to judge of the interests of the commercial world, to pronounce whether this is or is not a dangerous publication? I am bound by my oath to declare my own opinion, and I should

mitigate the censure with which it is to be visited. Nothing could be more unfair than to judge him by the standard of propriety established in the quiet times in which we live. With shades of difference among politicians as to the extension of the franchise, vote by ballot, and the duration of parliaments, all the Queen's subjects are attached to the constitution, and disposed to obey the law. Then there was a small but formidable party, composed of some who sincerely believed that for the public good all existing institutions should be abolished, and of others recklessly desirous to bring about bloodshed and confusion, in the hope of grasping at wealth and power for themselves. The great body of the loyal and well-intentioned were then in a panic, and thought that the best course for safety was to enact new penal laws, and visit with remorseless severity all those persons from whom their fears had arisen. Lord Kenyon, I am convinced, on every occasion was persuaded that he acted lawfully as well as conscientiously, and he was regarded by many as the saviour of his country.

forget my duty if I were not to say to you THAT IT IS A GROSS LIBEL."

The Defendant was found Guilty, and reckoned himself lucky to get off with six months' imprisonment, and a fine of £100.[1]

On the trial of Williams for publishing "Paine's Age of Reason," Lord Kenyon, in summing up, tried to rival Erskine's famous address in defense of revealed religion:—

"Christianity," said he, "from its earliest institution met with its opposers. Its professors were very soon called upon to publish their 'Apologies' for the doctrines they had embraced. In what manner they did that, and whether they had the advantage of their adversaries, or sunk under the superiority of their arguments, mankind for near two thousand years have had an opportunity of judging. They have seen what Julian,[2] Justin Martyr, and other apologists have written, and have been of opinion that the argument was in favor of those publications. We have heard to-day that the light of nature and the contemplation of the works of creation are sufficient, without any other revelation of the Divine will. Socrates, Plato, Xenophon, Tully—each of them in their turns professed they wanted other lights, and knowing and confessing that God was good, they took it for granted the time would come when he would impart another revelation of his will to mankind. Though they walked as it were through a cloud, darkly, they hoped their posterity would almost see God face to face."

The *talesmen* did not know which to admire the most, the piety, the learning, or the eloquence of the judge. The defendant was very properly found *guilty*, and sentenced to a year's imprisonment with hard labor.[3]

I now come to a trial at which I was myself actually present—the prosecution of Hadfield for shooting at George III.

On the 28th of June, 1800, being yet a boy, for the first time in my life I entered the Court of King's Bench, and with these eyes I beheld Lord Kenyon. The scene was by no means so august as I had imagined to myself. I expected to see the Judges sitting in the great hall,

[1] 27 St. Tr. 627–642. [2] Sic. [3] 26 St. Tr. 653–720.

which, though very differently constructed for magnificence, might be compared to the Roman Forum. The place where the trial was going on was a small room inclosed from the open space at the south-east angle, and here were crowded together the judges, the jury, the counsel, the attorneys, and the reporters, with little accommodation for bystanders. My great curiosity was to see Erskine, and I was amazingly struck by his noble features and animated aspect. Mitford, the Attorney General, immediately inspired the notion of extraordinary sagacity. Law looked logical and sarcastic. Garrow verified his designation of "the tame tiger." There were five or six rows of counsel, robed, and wigged, sitting without the bar—but I had never heard the name of any of them mentioned before. I was surprised to find the four Judges all dressed exactly alike. This not being a Saint's day, the Chief Justice did not wear his collar of SS to distinguish him from his brethren.[1] There was an air of superiority about him, as if accustomed to give rule, but his physiognomy was coarse and contracted. Mr. Justice Grose's aspect was very foolish, but he was not by any means a fool, as he showed by being in the right when he differed from the rest.[2] Mr. Justice Lawrence's smile denoted great acuteness and discrimination. Mr. Justice Le Blanc looked prim and precise.

From the opening of the case by the Attorney General, I formed a very low estimate of the eloquence of the English bar; but when Erskine began the defense, he threw me into a frensy of admiration, and indeed I should have been fit for nothing had I been less excited; for this was perhaps his *chef d'œuvre*, and, therefore, the finest speeeh ever delivered at the English bar.

Lord Kenyon did not interpose till several witnesses had distinctly proved the mental hallucination under which the prisoner had labored when he fired at the King. The solemn proceeding was then thus terminated:—

[1] This was written before I had taken my seat as Chief Justice; and I had erroneously supposed that the collar of SS is worn on saints' day, along with the scarlet and ermine.

[2] "GROSE *Justice*, with his *lantern* jaws,
Throws *light* upon the English laws."
Complimentary Epigram by Erskine.

Lord Kenyon: "Mr. Erskine, have you nearly finished your evidence?"

Mr. Erskine: "No, my Lord, I have twenty more witnesses to examine."

Lord Kenyon: "Mr. Attorney General, can you call any witnesses to contradict these facts? With regard to the law as it has been laid down, there can be no doubt upon earth. To be sure if a man is in a deranged state of mind at the time he commits the act charged as criminal, he is not answerable. The material question is *whether at the very time when the act was committed this man's mind was sane?* I confess that the facts proved convince my mind that at the time he committed the supposed offense (and had he then known what he was doing, a most horrid offense it was) he was in a very deranged state. Mr. Attorney General, you have heard the facts given in evidence. To be sure, such a man is a most dangerous member of society, and it is impossible that he can be suffered, supposing his misfortune to be such, to be let loose upon the public. But I throw it out for your consideration, whether in this criminal prosecution it is necessary to proceed further. If you can show it to be a case by management to give a false color to the real transaction, then assuredly the defense vanishes."

Mr. Attorney General: "I must confess I have no reason to suspect that this is a colored case. On the contrary, I stated that I understood the prisoner had been discharged from the army upon the ground of insanity. But the circumstances which have now appeared were perfectly unknown to me."

Lord Kenyon: "Your conduct, Mr. Attorney General, has been extremely meritorious. In the present posture of the cause, I will put it to you whether you ought to proceed."

Mr. Attorney General: "Your Lordship will feel how much it was necessary for me to wait until I should have some intimation on the subject."

Lord Kenyon: "It was necessary for us all to wait till the cause had reached a point of maturity. The prisoner, for his own sake and for the sake of society at large, must not be discharged. This is a matter which con-

cerns every one of every station from the King on the throne to the beggar at the gate.. Any one might fall a sacrifice to this frantic man. For the sake of the community, he must somehow or the other be taken care of, with all the attention and all the relief that can be afforded him."

Attorney General: "I most certainly acquiesce in what your Lordship has said."

Lord Kenyon: "Gentlemen of the jury, the Attorney General's opinion coinciding with mine, I believe it is necessary for me to submit to you whether you will not find that the prisoner at the time he committed the act was not under the guidance of reason?"

The jury finding accordingly, the prisoner was detained in custody—somewhat irregularly, there being then no law to authorize the detention, but the statutes 46 Geo. III., chapters 93, 94 were passed, legalizing the detention in this and all similar cases.[1]

On this occasion Lord Kenyon conducted himself with great propriety, laying down the sound rule which ought to prevail where the defense to a criminal charge is *insanity*, and applying that rule with promptness and precision to the facts which were proved before him. In the next case which I have to mention he was very unfortunate, and he justly incurred considerable obloquy.

Benjamin Flower, having published a paragraph in a Cambridge newspaper of which he was the proprietor, reflecting on Dr. Watson, Bishop of Llandaff, complaint was made of it in the House of Lords as a breach of privilege, and without any summons or hearing of the party accused, it was voted a libel, and he was ordered to be taken into custody by the Sergeant-at-Arms. Accordingly he was arrested at Cambridge, brought a prisoner to London, and produced at the bar. A motion was then made that for this supposed offense he be fined £100 and confined six months in Newgate.

Lord Kenyon supported the motion, and said there was no ground for complaint on the score of severity, for if the libel had been prosecuted in the King's Bench, the defendant would not have got off with so slight a punishment.

[1] 21 St. Tr. 1281–1356.

After the defendant had lain some weeks in Newgate, he applied for his liberation to the Court of King's Bench, by Mr. Clifford, a descendant of the Cliffords Earls of Cumberland—when the following dialogue took place between the counsel and the Chief Justice:—

Mr. C.: "I humbly move your Lordship for a writ of *habeas corpus*, to be directed to the keeper of Newgate, commanding him to bring into court the body of Benjamin Flower." *J. C.* "Is not Mr. Flower committed by the House of Lords for a breach of privilege?" *Mr. C.* "Yes, for a libel and breach of privilege." *C. J.* "Then you know very well, Mr. Clifford, you cannot succeed. This is an attempt which has been made every seven or eight years for the last half century; it regularly comes in rotation; but the attempt has always failed. You do not expect to succeed?" *Mr. C.* "I do expect to succeed. I should not make this application unless I knew I could support it. My affidavit states, that Mr. Flower is imprisoned in Newgate for a supposed libel on the Bishop of Llandaff, that he is not conscious of having libeled the Bishop of Llandaff or any one else, and that he has never been put upon his defense." *C. J.* "Does he swear that it is not a libel on the Bishop of Llandaff?" *Mr. C.* "He swears that he is not conscious that it is a libel." *C. J.* "Another part of his affidavit is also false, that he was not put upon his defense. I happened to be one of his judges—I was in the House of Lords at the time. File your affidavit, Sir, that your client may be prosecuted. You shall take nothing by your motion."

The counsel, however, insisted on being heard, to argue the question that the commitment was illegal, and at last Lord Kenyon said,—

"If you will have it, take your writ. It will be of no use to you. You move it merely by way of experiment, and without any view to benefit your client; I am sure of that."

The defendant being brought up in custody of the keeper of Newgate, Mr. Clifford complained bitterly of the language of the Chief Justice when the rule was granted, and delivered a very long address upon the illegality of the commitment, interspersed with many

sarcastic remarks on the House of Lords and the modern nobility by whom it is filled.

Lord Kenyon: "The learned counsel has drawn a picture of a monster established in power by the voice of the people, and then doing a great many horrid things—among others filling the House of Lords with a banditti. The learned counsel, it is true, did not use that word—but 'persons who supersede the ancient nobility of the country.' I happen to be one of that number: of myself I will say nothing. But if we look back to the history of the country, and consider who were made peers in former times, and what they were whose descendants are now called 'the hereditary nobility of the country;' if we look back to the reign of Charles II., in the letters which form the word CABAL, will the memory of the learned counsel, who seems to think virtues and vices hereditary, furnish him with the names of no persons who were then made peers, although they were not very likely to devolve virtues on the succeeding ages? From what has passed, I am called upon to vindicate the House of Lords. Their honor stands on so stable a ground, that no flirting of any individual can hurt them. The public feels that its liberties are protected by the two Houses of Parliament. If ever the time shall come that any malignant, factious, bad man shall wish to overturn the constitution of the country, the first step he will take, I dare say, will be to begin by attacking in this Court one or both of the Houses of Parliament. But all such petty attempts will have no effect upon the public mind; they will only recoil upon those who make them."

He then proceeded to lay down the sound rule that commitments for contempt by either House of Parliament could not be examined into by a court of law, and the prisoner was remanded to Newgate.[1] Mr. Clifford published a report of the case with a postscript, in which he said,—

"The hereditary boasts one advantage over new nobility; from the very cradle its children are formed to the stations which they are destined afterwards to fill. Accordingly we seldom observe in our hereditary peers

[1] 27 St. Tr. 915–1078.

those pedantic notions of impracticable morality, or that boisterous impetuosity of manners, which sometimes accompany and disgrace even in the highest situations those who have been raised to them from the desk, merely on account of their industry and professional success." [1]

Lord Kenyon was much more fortunate in supporting the inquisitorial power of the two Houses of Parliament, and their right to order the publication of whatever they think necessary for the public service, although it may reflect upon individuals. After Hardy, Horne Tooke, and Thelwall had been tried for high treason and acquitted, a committee of the House of Commons was appointed to inquire into the condition of the country, and made a Report to the House, stating that evidence was adduced against them, showing "that they and their confederates were decidedly hostile to the existing government, and constitution of this kingdom, and wished for the subversion of every established and legitimate authority." This Report was ordered by the House to be printed, and was reprinted and published by a bookseller. Against him an application was made, on behalf of Horne Tooke, to the Court of King's Bench, for a criminal information. The defendant made an affidavit of the facts, and denied all malicious intention whatsoever. Erskine for the prosecution contended that the House of Commons, though they might inquire, could not lawfully publish the result of their inquiries to the detriment of any individual, and that at any rate the defendant could not justify the republication of a libel for his own advantage, because it had been published by the House of Commons on pretext of the good of the community.

Lord Kenyon (without hearing the other side): "This is an application for leave to file a criminal information against the defendant for publishing a libel; so that the application supposes that this publication is a libel. But the inquiry made by the House of Commons was an inquisition made by one branch of the Legislature to enable them to proceed farther and adopt some regulations for the better government of the country. This

[1] This cousin of Lord-Treasurer Clifford was an admirable speaker, and might have risen to the highest honors, but he died young from intemperance.

report was first made by a Committee of the House of Commons, then approved by the House at large, and then communicated to the other House; there it is now *sub judice;* yet we are told that it is a libel on the prosecutor. It is impossible for us to admit that the proceeding of either of the Houses of Parliament is a libel; and yet that is to be taken as the foundation of this application. The King *v.* Williams, so much relied upon, was decided in the worst of times, and it has no application to the present case. This a proceeding by one branch of the Legislature, and, therefore, we cannot inquire into it. I do not say that we would never inquire whether the House of Commons has exceeded its jurisdiction; but, acting within its jurisdiction, it cannot be controlled by us. An injunction by the House of Commons to stay proceedings in a common action between two indviduals, we should treat as a nullity. But the House of Commons having the right to print and publish what they consider essential for public information, we cannot consider whether they have exercised that right properly on any particular occasion, and the individual who suffers from the exercise of it is without legal remedy." *Lawrence, J.:* "It is of advantage to the public, and even to the legislative bodies, that true accounts of their proceedings should be generally circulated, and they would be deprived of that advantage if no person could publish their proceedings without being punished as a libeler." [1]

Lord Kenyon, however, with great spirit, and upon the soundest principles, would not suffer a peer under pretense of Parliamentary privilege to libel a fellow subject with impunity.

The Earl of Abingdon, having quarreled with his attorney, delivered a most calumnious speech against him in the House of Lords, and then published it in a newspaper. The attorney indicted him for publishing the libel.

The trial coming on before Lord Kenyon at Westminster, the noble defendant appeared in Court as his own counsel. He modestly abstained from claiming to sit on the bench with the Chief Justice, but, remaining

[1] 8 T. R. 293.

at the bar, he strenuously insisted on his right to be covered, because the Chief Justice and he were both peers and entitled to the same privileges.

Lord Kenyon: "I do not sit on this seat as a peer; but, being assigned by our Lord the King as his Chief Justice, to hold pleas before him, out of respect to the Sovereign of these realms and to the sovereignty of the law, the noble Earl must be uncovered."

The trial proceeded, and it was clearly proved that Lord Abingdon had sent his speech in his own handwriting to the newspaper office, with a request that it might be published. Being called upon for his defense, he contended that the prosecution could not be supported, as the alleged libel was printed from the written speech which he himself had actually read in his place in Parliament.

Lord Kenyon: "Heaven forbid that we should seek to animadvert here upon a speech made in Parliament. Parliament alone can inquire into the merits of a speech so made, and, if it deserves punishment, punish the offender. We inquire not what the noble Earl did in the House of Lords, but what he did in Catherine-street in the Strand, when, by his agent, he delivered a paper in his own handwriting containing most calumnious charges against the prosecutor, and requested that it might be printed and published. This was the act of a simple individual seeking to gratify his malice, and he is criminally responsible for it, although he happens likewise to be an Earl."

The defendant was found guilty, and most justly sentenced to imprisonment.[1]

Lord Kenyon meritoriously checked the doctrine which was becoming too rampant, that a man is liable for the consequences, however remote or unforeseen, which can be traced to his acts. The proprietor of a theater having brought an action against a critic for a

[1] 1 Espinasse, 226. In the year 1843 I tried unsuccessfully to carry a clause in my Libel Bill to exempt from prosecution or action a true account of speeches in Parliament published *bonâ fide* for the information of the public; yet I have been severely censured for not deciding as a Judge that neither prosecution nor action can be maintained for a true account in a newspaper of anything said at any public meeting. This would, indeed, have been "Judge-made law."

libel on one of his performers, alleged in the declaration that the defendant, "contriving to terrify and deter a certain public singer called Gertrude Elizabeth Mara, who had been retained by the plaintiff to sing publicly for him, wrote and published a certain malicious paper. &c., by reason whereof the said Gertrude Elizabeth Mara could not sing without great danger of being assaulted and ill-treated, and was prevented from so singing, and the profits of the theater were rendered much less than they otherwise would have been." Madame Mara, being called as a witness, did swear that on account of the obnoxious article she did not choose to expose herself to contempt, and had refused to sing.

Lord Kenyon [stopping the defendant's counsel]: "The injury is much too remote to be the foundation of an action. An action might equally be supported against every man who circulates the bottle too freely and intoxicates an actor, *per quod* he is rendered incapable of performing his part upon the stage. The loss here arises from the vain fears and caprice of the actress. This action is to depend, forsooth! on the nerves of Madame Mara!"[1]

He likewise did good service in discountenancing the rapacity of surveyors. One of these gentlemen insisted that he was entitled to 5 per cent. upon all the expenditure in erecting and finishing a house for his trouble in paying the tradesmen's bills, and called several witnesses to prove that this was the usual charge of surveyors.

Lord Kenyon: "The plaintiff states in his declaration his demand to be 'as much as he reasonably deserves' for his work and labor. Does he *reasonably* deserve to have this exorbitant demand? As to the custom attempted to be proved, the course of robbery on Bagshot Heath might as well be proved in a court of justice. It ought not to be and it cannot be supported."

The plaintiff was nonsuited.[2]

Lord Kenyon showed a very laudable zeal to repress the very infamous practice of some fashionable journals in his time to invent scandalous stories of persons in

[1] Astley *v.* Harrison, Peake, 256.
[2] Upsdall *v.* Stewart, Peake, 255.

"high life." The *Morning Post* published a paragraph referring to Lady Elizabeth Lambert, a very beautiful and accomplished girl of seventeen, whose character was unspotted and whose manners were irreproachable, stating that "she had made a *faux pas* with a gentleman of the shoulder-knot." Lady Elizabeth brought an action for this calumny, suing by her mother, the Countess Dowager of Cavan, as her *prochein amie.* The defendant's counsel tried to palliate the case on the ground of inadvertence and misinformation, allowing that the young lady had never displayed the smallest sign of levity, and had always been the pride and joy of her friends.

Lord Kenyon: "It is seriously to be lamented that the very many cases which are brought, some of them civil and some criminal, should have no effect on persons who publish newspapers to stop the progress of this which everybody complains of. If it is to be stopped, it is to be stopped by the discretion, good sense, and fortitude of juries. Gentlemen, it is to you, and you only, that this lady can look for redress; and it is not her cause only which has been this day pleaded before you—it is the cause of injured innocence spread from one end of the kingdom to the other; and therefore if this lady is not to be protected, nay, if ordinary damages are to be given, and not such as shall render it perilous for men to proceed in this way, we are in an unpleasant situation indeed, and particularly so when we have heard it openly avowed in Court by the proprietors and publishers of newspapers that their commodity is not suited to the public taste unless *capsicum* is put into it—unless it be seasoned with scandal. I do not believe that in all the cases of libel ever canvassed, one so criminal as this is to be met with. You, gentlemen, are bound to guard the feelings of this injured lady; and what the feelings of injured innocence are every one must feel who is not an apostate from innocence himself. You, gentlemen, before you give your damages, will put yourselves into the situation of this injured lady, asking yourselves if those whom you are most bound by the laws of nature and of God to protect had been insulted in a similar manner, what damages you would have expected from a jury of your country."

The jury found a verdict for the plaintiff with £4,000 damages.

In actions for criminal conversation, his ardent love of morality blinded his judgment, prevented him from distinguishing the merits of each particular case, and led him to confound the principles of civil and criminal justice. On one occasion he said :—

"My endeavors, I confess, to deter men from the enormous crime of adultery, have hitherto proved ineffectual. But judges and juries are appointed to redress private and public wrongs; we are the guardians of the morals of the people, and we ought never to relax in our efforts to prevent the commission of crimes which strike at the root of religion and of domestic purity and happiness. It is said here the defendant is not able to pay large damages, but this is an aggravation of his misconduct. Is his poverty to tempt him to injure unfortunate husbands? but it will, if it enables him to do so with impunity. I advise you to give ample damages, that the vice may be suppressed."

In another case, in which the wife of the plaintiff (as he knew when he married her) was a wanton, it actually came out on cross-examination that she not only painted her face, but that she exposed her person most indecently :—

Lord Kenyon: "I see no ground here for cutting down the damages. Such things as are imputed to the plaintiff's wife, are not uncommon among ladies of quality, and no mercy should be shown to the defendant (General Gunning), who is an abominable, hoary, degraded creature."

In the famous case of *Howard* v. *Bingham*, he said :—

"I had not been long in a court of justice, before I felt that I should best discharge my duty to the public by making the law of the land subservient to the laws of religion and morality; and therefore, in various cases that have come before me, when I saw a considerable degree of guilt, I have pressed the judgment of juries to go along with me in enforcing the sanction of religion and morality by the heavy penalties of the law; and I have found juries co-operate with me in trying how far the immorality of a libertine age would be corrected by

letting all parties know that they best consult their own interest by discharging those duties they owe to God and society."

Such speeches gained him great popularity with the vulgar, but made the judicious grieve. Even Lord Eldon, when Chief Justice of the Court of Common Pleas (although strongly disposed to support him), said, on the trial of an action for seduction:—

"I gladly lay hold of this opportunity of disburdening my mind of an opinion that has long lain heavy upon me, as it is directly in opposition to the judgment of one of the most learned judges and best of men that ever sat in Westminster Hall, a man to whom the laws of this country, and (what is of more consequence) the public morals, are as much indebted as to any man among the living or the dead. But, having offered this tribute to truth, I am bound, by my oath, to give my own opinion, that, in a civil action of this nature, the jury are bound by law to consider, in awarding the amount of damages, not what may be an adequate punishment to the defendant for his criminality, but what will be a sufficient compensation to the plaintiff for the injury complained of."

Lord Kenyon likewise carried on a furious war against the destructive vice of *gaming*, which he declared to be mischievously prevalent in both sexes. He recommended that fashionable gaming establishments should be indicted as common nuisances, adding this threat, which is said to have caused deep dismay: "If any such prosecutions are fairly brought before me, and the guilty parties are convicted, whatever may be their rank or station in the country, though they may be the first ladies in the land, they shall certainly exhibit themselves in the pillory."

This ungallant attack upon the fair sex roused a chivalous defense from the Earl of Carlisle, who described the sad consequences arising from the tribunals of justice being occupied by "legal monks, utterly ignorant of human nature and of the ways of men, who were governed by their own paltry prejudices, and thought they must be virtuous in proportion as they were coarse and ill-mannered."

Lord Kenyon cared nothing for any of these invectives except the imputation of being a "legal monk." This stuck to him very fast, and he frequently complained of it. When making any observation to the jury which he thought very knowing as well as emphatic, he would say :—

"But, gentlemen, you will consider how far this is entitled to any weight, coming from a *legal monk;* for a great discovery has been made, that the judges of the land, who are constantly conversant with business, who see much more of actual life on their circuits and in Westminster Hall than if they were shut up in gaming houses and brothels, are only *legal monks.*"

On another occasion he said :—

"Somebody tells us that the Judges are *legal monks*—that they know nothing of the world. What is the world? It is necessary to define terms, in order to know what the world is, and what is meant by this knowledge of the world. If it is to be got by lounging, like young men of fashion, about Bond Street, or at gaming-tables, or at Newmarket, or in private houses of great men, or in brothels, I disavow being acquainted with it. But surely something of what may be called a knowledge of the world, *quicquid* AMANT[1] *homines* may be contained in courts of justice."

It is said that he went on addressing grand juries on the circuit in this strain, till Lord Carlisle threatened to bring him before the House of Lords for a breach of privilege.

His indiscreet impetuosity of manner and his want of *tact* sometimes subjected him to the triumph of ribaldry and rudeness. In prosecutions for blasphemy, by at first interrupting the defendant's counsel without reason, he was beaten, and he afterwards allowed an open reviling of our holy religion, which he ought peremptorily to have stopped. "Christianity is certainly parcel of the law of England" in this sense, that openly to insult its Divine Author is a misdemeanor which is punishable when committed, and which Judges are justified in preventing. Yet Mr. Stewart Kyd, who called upon the prosecutor to produce "a certain book called the Bible,"

[1] Sic.

after one or two small victories to which he was strictly entitled, was very improperly permitted to ridicule and stigmatize at great length the most sacred truths of the Gospel.

On another occasion, John Horne Tooke, taking advantage of the Chief Justice's hasty temper, succeeded in acting such a scene of insolence as no other Judge would have endured. At the Westminster election, in 1788, Mr. Fox, having a large majority on the poll, was returned as duly elected, but Horne Tooke, the unsuccessful candidate, presented a petition against him. This being referred to a select committee under the Grenville Act, was voted "frivolous and vexatious." Mr. Fox was thus entitled to his costs, which were taxed at £198 2*s.* 6*d.*, and payment of this sum being refused, an action was brought to recover it. The statute provided that, on the trial of such an action, no evidence should be necessary or receivable beyond the resolution of the committee and the taxation of costs verified by the signature of the Speaker of the House of Commons. Horne Tooke now appeared as his own counsel. Erskine, for the plaintiff, that he might give his opponent no topics to dilate upon, merely said, with his usual discretion, "I am forbidden by the Act of Parliament to enter into any discussion of the merits of this case, or anything relating to them. I will, therefore, merely put in the statutable evidence to entitle Mr. Fox to your verdict for the sum of £198 2*s.* 6*d.*" This evidence he gave in the course of two minutes, and said, "This, my Lord, is my case."

Lord Kenyon, although he had been told that the defendant was to attend as his own counsel and to make a "*terrible splash*," said, in a sharp, contemptuous tone, "Is there any defense?"

Horne Tooke (taking a pinch of snuff, and looking round the Court for a minute or two): "There are three efficient parties engaged in this trial—you, gentlemen of the jury, Mr. Fox, and myself, and I make no doubt that we shall bring it to a satisfactory conclusion. As for the Judge and the Crier, they are here to preserve order; we pay them handsomely for their attendance, and, in their proper sphere, they are of some use; but

they are hired as assistants only; they are not, and never were, intended to be the controllers of our conduct. Gentlemen, I tell you there is a defense, and a very good defense, to this action, and it will be your duty to give effect to it."

He then began a long narrative of the last Westminster election, and, without any interruption, had come to what he called the financial part of it, stating that Lords of the Treasury were expected to pay £200 a piece, and those in higher situations more, according to their salaries. At last, Lord Kenyon burst out:—

"Mr. Horne Tooke, I cannot sit in this place to hear great names and persons in high situations *calumniated and vilified*—persons who are not in this cause—persons who are absent, and cannot defend themselves. A court of Justice is not a place for *calumny;* it can answer no purpose; you must see the impropriety of it, and it does not become the feelings of an honorable man."

H. T. (again taking snuft): "Sir, if you please, we will settle this question between us now in the outset, that I may not be liable to any more interruptions."

C. J.: "Lord Lovat brought forward offensively the names of persons of great respectability, and he was stopped by the House of Lords. The Chancellor informed him that it was indecent to do so, and that a man of his station ought to refrain from such things. You are in the wrong path, Mr. Horne Tooke."

H. T.: "I am persuaded that I shall be able very easily and very shortly to satisfy you that I am not in the wrong path, and it is more desirable that I should do so now, because it is the path which I most certainly mean to pursue, and will not be diverted from. You know (at least you ought to know), and I acknowledge, that if, under the pretense of a defense in this case, I shall wantonly and maliciously say or do any word or thing which would be punishable by the laws of the land, if said or done by me wantonly and maliciously anywhere else, I shall be equally liable to prosecution and punishment by the same laws and in the same manner for what I shall say here. But, Sir (taking another pinch of snuff, and lowering his voice, so as effectually

to fix the attention of the audience), you have made use of some words which I am willing to believe you used in a manner different from their usual acceptation. You spoke of *calumniating* and *vilifying*. Those words, Sir, usually include the notion of *falsehood*. Now, I presume you, Sir, did not mean them to be so understood. I am sure you did not mean to tell the jury that what I said was *false*. By *calumny* you only meant something *criminatory*—something injurious to the character of the person spoken of—something that he would not like to hear, whether true or false."

C. J.: "Certainly, Mr. Horne Tooke; certainly."

H. T. (with an affectation of good nature): "Well, I thought so; and, you see, I was not desirous to take advantage of the words to impute to you any wrong meaning or intention; because, had you really intended *falsehood* in the *calumny*, your Lordship would have grossly *calumniated* me. I have spoken nothing but the truth, as I believe you know, and which I am able and willing to prove. In one thing I go farther than you do, and am stricter than you are. I think it hard that any persons, whether in a cause or out of a cause, should at any time *unnecessarily* hear what is unpleasant to them, though true. This rule I mean to observe. At my peril I shall proceed, and I expect to meet with no farther interruption from your Lordship."

Having thus gained a complete mastery over the Chief Justice, he proceeded to waste the public time most shamefully, and to make many observations which ought to have been stopped, and with discretion and firmness might easily have been stopped by the Judge. Thus he ridiculed the prevailing notion of "the independence of the Judges:"—

"When anything peculiarly oppressive is now-a-days to be done, we have always a clatter made about the *judicial independence* with which we are now blessed. My own belief is, that the Judges are now much more dependent on the Crown and much less dependent on the people than in former times, and, generally speaking, they were certainly more independent in their conduct. They then sat on the bench, knowing they might be turned down again to plead as common advocates at the bar;

and indeed it was no uncommon thing in those days to see a counsel at the bar browbeaten and bullied by a Chief Justice on the bench, who in a short time after was to change places with the counsel and to receive in his own proper person the same treatment from the other in his turn. Character and reputation were then of consequence to the Judges, for if they were not well esteemed by the public, they might be reduced to absolute destitution; whereas if they were sure of being well employed on returning to the bar, dismissal from their poorly paid offices was no loss or discredit, and they might set the Crown at defiance. Now they are completely and forever independent of the people, and from the Crown they have everything to hope for themselves and their families. Till the corrupt reign of James II., no common law Judge was enobled. Chief Justices Cope and Hale, infinitely greater lawyers and abler men than any of their successors in our time, lived and died commoners. Who was the first judicial Peer? The infamous Judge Jeffreys. But in his campaign in the West, and on other occasions, he had done something to deserve and to illustrate the peerage. Now-a-days the most brilliant apprenticeship to the trade of a Peer is to carry a blue bag in Westminster Hall! This suddenly leads to riches, and the lawyer suddenly rich is made a Baron; whereas the fact of some particular individual of suspicious character being all of a sudden flush of money who was never known to have any before, often in the good old times led to the certain detection of the thief."

He then, to show how badly justice was administered, told a long story of a prosecution which he had instituted against some rioters at the Westminster election being defeated by a single circumstance of his counsel having entered the court a few minutes after nine in the morning, the Chief Justice having ordered them all to be acquitted for want of prosecution. Mr. Garrow here interposed, and by stating the true facts of the case, showed that Mr. Tooke, his counsel, attorney, and witnesses, had all been guilty of gross negligence, and that the Chief Justice had shown upon that occasion great patience and indulgence;—

H. T.: "There can be no doubt at all but that your Lordship will always find some one in your own Court willing and ready to get up and recommend himself to your favor by a speech in your defense. I should have been surprised if it had not been the case now; but I must rather thank Mr. Garrow, for he has given me time to breathe a while."

C. J.: "I want no defense, Sir; I want no defense, no defense. What has been said against me rather excites my compassion than my anger. I do not carry about me any recollection of the trial alluded to, or any of its circumstances."

H. T.: "I cannot say that I *carry about me anything* in consequence of it. I *carry about me* something *less*, by all the money which it took out of my pocket. Although Mr. Garrow has jumped up to contradict me, the affair happened exactly as I stated it. I heard him with much pleasure, for, as I said, I wanted to breathe. But we may have a different House of Commons, to consist of the real representatives of the people, of whom I may happen to be one, and I pledge myself now that I will, in my place there, call you, my Lord, to a proper account for your conduct that day, and Mr. Garrow may reserve his justification of your Lordship's conduct till that time, when I fear you will stand greatly in want of it. Now, gentlemen, having proved to you how a Judge may be made courteous and quiet, and may be taught to confine himself to the discharge of his proper duties in this place, I shall conclude by asking you, who alone have anything to do with the verdict, whether you think it fair I should pay the costs incurred by Mr. Fox as candidate for Westminster, and you will well and truly try that which is the true and the only issue between us."

C. J.: "Gentlemen, you are bound by your oaths 'well and truly to try this cause,' and the question is, whether by the law of the land the defendant is bound to pay the plaintiff this sum of £198 2*s.* 6*d.* Now, gentlemen, by the law of the land, if the petitioner refuses to pay the costs of an election petition, voted frivolous and vexatious, when duly taxed as the Act directs, he may be brought before a court of justice and compelled to do so. If you believe the evidence (which is

not contradicted), you have such a case before you, and you will 'well and truly have tried this cause' by finding a verdict for the plaintiff for the sum demanded."

Nevertheless, several of the jury had been much captivated by Horne Tooke's eloquence, and they cared very little for the direction of a Judge who had suffered himself to be so insulted. Therefore, it was not until after a struggle of four hours and twenty minutes that they were induced to concur in finding a verdict for the plaintiff.[1] If Lord Mansfield had presided on this occasion, without ever having been angry or excited, he would have put a speedy end to such attempts at ribaldry, and Horne Tooke would have left the court not only defeated, but disgraced.

I cannot justly conclude my notice of Lord Kenyon's judicial decisions, without pointing out a few of them in which he was egregiously wrong. An application was made to the Court of King's Bench for a criminal information against the printer of a newspaper. In this newspaper had appeared the following paragraph "of and concerning" the prosecutor, the then Earl of Lonsdale, who, from being engaged in constant litigation with all his neighbors, had the reputation of being "the greatest *law Lord* in England":—

"The painters are much perplexed about the likeness of the Devil. To obviate this difficulty concerning His Infernal Majesty, PETER PINDAR has recommended to his friend OPIE the countenance of LORD LONSDALE."

Now, this impudent attack, however indecorous, was hardly sufficiently grave to be made the foundation of a common action or indictment, but was wholly unfit for the special interference of the Court of King's Bench—which is only to be invoked in cases of real importance. Erskine accordingly thought that he should laugh it out of Court.

"The noble Earl can only apply to your Lordships from a sense not of wounded character but of *woundea beauty—spretæ injuria formæ*. There is no hidden malice in the writer—he does not recommend that this portrait of the devil should be painted *with horns*."

[1] 1 Townsend, 59.

Lord Kenyon: "The tongue of malice has never said that."

Erskine: "True, my Lord, and nothing could be meant but a comparison of bodily appearance, without any insinuation that there was a mental likeness. And here, my Lords, without any disrespect to the noble prosecutor, I must be allowed to say that the paragraph is not a libel on him, but on the devil. That great personage would doubtless apply to your Lordships for protection, had it not been for the maxim that 'those who apply to your Lordships must come into court with *clean hands.*' Although Lord Lonsdale may reckon himself a very handsome man, he should recollect that to liken his countenance to that of the devil is a high compliment. In appearance he falls greatly short of the devil, and therefore he ought to have been much flattered by the comparison. I would (though a poor man), for the sake of my family, give Opie or Fuseli one hundred guineas for a likeness of myself verifying the description of his infernal majesty in Milton:—

> "'He above the rest,
> In shape and gesture proudly eminent
> Stood like a tower: his form had not yet lost
> All her original brightness, nor appeared
> Less than archangel ruined, and the excess
> Of glory obscured.'

"The devil was still handsome, even in the most unpromising masquerade, when he entered the body of a serpent. In addressing Eve, we are told, 'pleasing was his shape and lovely.' Why, then, should Lord Lonsdale be afraid that the devil depicted with the features of his Lordship must excite disgust? But, my Lords, the paragraph is mere pleasantry, quite unsuited to your Lordships' notice."

Lord Kenyon: "I am of opinion that we should protect the characters of individuals from ridicule and contempt. We must abide by the rules which the Court has laid down, and not be led away by the brilliancy and imagination of an advocate. Let the rule be made absolute."

The puisnes, who had not been consulted before this judgment was pronounced, looked aghast. From their

demeanor during Erskine's speech they were supposed to be on his side, but they remained silent.

In Haycraft *v.* Creasy, Lord Kenyon was very properly overruled by his brother judges, and the mortification which he suffered was supposed to have occasioned his death. The action was brought by a shopkeeper against a credulous old gentleman for having given a deceitful representation of the character and circumstances of a young lady of the name of Robinson, whereby the plaintiff had been induced to sell to her a large quantity of goods on credit, the price of which he had lost. The defendant having, like many others, been deceived by her arts, and really believing that what he said was true, told the plaintiff that she was a lady of great fortune and heiress of the estate of Fascally, in the county of Perth, and that she was not only respectable herself, but nearly connected with some of the highest families in Scotland. In truth she was a mere adventuress, and swindled all that would trust her. Law, for the defendant, contended that the action could not be maintained, as there was no *mala fides* to support it, and to make him liable without actual *deceit* would be to treat him as *surety* for Miss Robinson without any written guarantee.

Lord Kenyon: "The Attorney General relies on the Statute of Frauds. To this I shortly reply by saying that the Statute of Frands has nothing to do with this case. The defendant is sued, not as surety for Miss Robinson, but for stating respecting her that which was not true, and which he had the means of knowing and must be supposed to have known, was not true, whereby a damage has been suffered by the plaintiff. If the present action cannot be supported, I have now for twelve years been deceiving the people of this country. Am I now, when perhaps from years the progress of my intellect may be to retrograde, to unsay what I have said so often? Where can I go to hide my head if this point should now be decided otherwise? What can I say to the people of this country? The ground I go upon is this: Did the defendant assert to be true that which he did not know to be true? This I consider sufficient evidence to support the charge of fraud. It

may not amount to moral turpitude, but it is, in my opinion, sufficient to constitute legal fraud, and legal fraud is, in my opinion, enough to support an action of deceit."

Grose, Lawrence, and Le Blanc, Js., however, on the assumption that the defendant was a dupe, clearly held that he could not be made liable in this form of action, which supposed that the defendant had stated what he knew to be false, or that, from some bad motive, he had stated as true facts which were untrue, and the truth of which had not been investigated. As his brethren proceeded *seriatim* in this strain, the Chief Justice's face showed the most terrible contortions; and when they had finished he exclaimed:—

"Good God! what injustice have I hitherto been doing! What injustice have I been doing!"

A gentleman who witnessed the scene says:—

"It was visible to every person in court that this ejaculation was not uttered in the penitent voice of regret for any injustice he might unconsciously have done from a mistake of the law, but in the querulous tone of disappointed pride, from finding that the other judges had presumed to think for themselves, and to question the supremacy of his opinion."[1]

No case of witchcraft ever having come before Lord Kenyon, we do not exactly know his opinions upon this subject, but he was probably sufficiently enlightened to have held that the statutes against it having been all expressly repealed, it could not be dealt with by the criminal courts as a temporal offense. He was, however, enthusiastically devoted to the doctrine that, although the statutes against *forestalliug* and *regrating* had "in an evil hour" been all expressly repealed, any such offense was still a misdemeanor at common law. and deserved to be punished with exemplary severity. Dearth in bad seasons he imputed to the combinations of farmers and the speculations of corn-merchants. Buying provisions to resell to the consumers he allowed to be legitimate commerce, as the farmer could hardly sell the produce of his farm by retail; but any buying of provisions with a view to sell to a dealer at an advanced price, he declared had a direct tendency to deprive the

[1] Note-book of a Retired Barrister.

poor of the necessaries of life, and therefore "blinked upon murder." The notion that the price of commodities is regulated by the proportion between the supply and the demand, he thought was only fit to be entertained by democrats and atheists. These sentiments were at the time highly popular, and contributed to raise his reputation as a great judge.

The first case in which he prominently propounded them was the King *v.* Waddington,[1] in which he granted a criminal information against the defendant for entering into forehand bargains with hop growers to buy from them at a fixed price all the produce of their hop-gardens for a year. After a verdict of guilty, the defendant was brought up for judgment, and the legality of the conviction being questioned, Lord Kenyon said:—

"It has been contended that if practices such as those with which the defendant stands charged, are to be deemed criminal and punishable, the metropolis would be starved, as it could not be supplied by any other means. I by no means subscribe to that position. I know not whether it be supplied from day to day, from week to week, or how otherwise; but this is to me evident, that in whatever manner the supply is made, if a number of rich persons are to buy up the whole or a considerable part of the produce from whence such supply is derived, in order to make their own private and exorbitant advantage of it to the public detriment, it will be found to be an evil of the greatest magnitude; and I am warranted in saying that it is a most heinous offense against religion and morality, and against the established law of the country. So far as the policy of the system of laws has been called in question, I have endeavored to inform myself as much as lay in my power, and for this purpose I have read Dr. Adam Smith's work, and various other publications upon the same subject, though with different views of it. I do not pretend to be a competent judge in this conflict of public opinion, though I cannot help observing that many of those who have written in support of our ancient system of jurisprudence, the growth of the wisdom of man for so many ages, are not, as they are alleged by some to be, men

[1] 1 East, 143, 166.

writing from their closets without any knowledge of the affairs of life, but persons mixing with the mass of society and capable of receiving practical experience of the soundness of the maxims they inculcate."

The defendant was punished by imprisonment and a heavy fine.

But Lord Kenyon's most elaborate and most applauded attack against forestallers and regraters was on the trial of an eminent corn-merchant of the name of Rusby, who stood indicted before him at Guildhall, for having bought a quantity of oats, and having resold them to another corn-merchant at a profit in the course of the same day. Thus, in a most impassioned tone, and with an assumption of peculiar solemnity, he summed up the evidence :—

" It frequently becomes the duty of juries in this place to decide causes where the interests of individuals are concerned, but a more important duty is imposed upon you to-day. This cause presents itself to your notice on behalf of all ranks, rich and poor, but more especially the latter. Though in a state of society some must have greater luxuries and comforts than others, yet all should have the necessaries of life ; and if the poor cannot exist, in vain may the rich look for happiness or prosperity. The legislature is never so well employed as when they look to the interests of those who are at a distance from them in the ranks of society. It is their duty to do so; religion calls for it; humanity calls for it; and if there are hearts not awake to either of those feelings, their own interest would dictate it. The law has not been disputed: for though *in an evil hour* all the statutes which had been existing above a century were at one blow repealed, yet, thank God, the provisions of the common law were not destroyed. The common law, though not to be found in the written records of the nation, yet has been long well known. It is coeval with civilized society itself, and was formed from time to time by the wisdom of mankind. Even amongst the laws of the Saxons are to be found many wise provisions against forestalling and offenses of this kind ; and those laws laid the foundation of our common law. Speculation has said that the fear of such an offense is ridiculous ; and

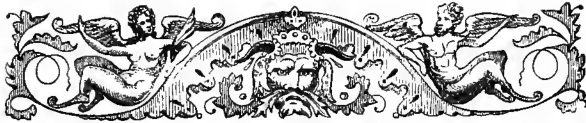
a very learned man—a good writer—has said 'you may as well fear witchcraft.' I wish Dr. Adam Smith had lived to hear the evidence of to-day, and then he would have seen whether such an offense exists, and whether it is to be dreaded. If he had been told that cattle and corn were brought to market, and there bought by a man whose purse happened to be longer than his neighbor's, so that the poor man who walks the streets and earns his daily bread by his daily labor could get none but through his hands, and at the price he chooses to demand; that it has been raised 3*d.*, 6*d.*, 9*d.*, 1*s.*, 2*s.*, and more a quarter on the same day, would he have said there is no danger from such an offense? Gentlemen, we are not 'legal monks,' as was said in another place, but come from a class of society that, I hope and believe, gives us opportunities of seeing as much of the world, and that has as much virtue amongst its members as any other, however elevated. It has been said that in one county—I will not name it—a rich man has placed his emissaries to buy up all the butter coming to the market; if such a fact does exist, and the poor of that neighborhood cannot get the necessaries of life, the event of your verdict may be highly useful to the public."[1]

A verdict of guilty being instantly pronounced, Lord Kenyon said: "Gentlemen, you have done your duty, and conferred a lasting obligation on your country." The defendant was sentenced to a heavy fine and long imprisonment.

The cry was then as strong for protection against forestallers as it has more recently been for protection against foreign importation; and so general was the agitation that corn-merchants were in great danger of being torn to piece by judge-led mobs. I am ashamed to say that most of the puisne judges participated in the hallucination of the King's Bench, insomuch that Sydney Smith thus wrote in his old age:—

"This absurdity of attributing the high price of corn to the combinations of farmers and the dealings of middle-men was the common nonsense talked in the days of my youth. I remember when ten judges out of twelve laid down this doctrine in their charges to the various grand juries on their circuits."

[1] Peake, N. P. Cas. 189.



CHAPTER XLV.

CONCLUSION OF THE LIFE OF LORD KENYON.

LORD KENYON had been very temperate in his diet, and had enjoyed uninterrupted health till he entered his 70th year. He then began to show symptoms of decay, which some attributed to his defeat in *Haycraft* v. *Creasy*, and some to the dangerous illness of his eldest son. The Chief Justice was exceedingly amiable in all the relations of domestic life, and to this promising young man, who was expected to be the heir of his vast accumulations, he was particularly attached.

In the autumn of 1801, there was imposed upon him the melancholy duty of closing the eyes of him from whom he had expected that the pious office would be performed for himself. When gazing into the open tomb of his first-born, he is said to have exclaimed: "It is large enough for both."

On the first day of next Michaelmas term the Chief Justice returned to his court a sorrow-stricken, heart-broken man. He was hardly able to hold up his head; not even a "*regrating*" case from the Oxford Circuit could excite him; and as soon as term was over, leaving the Nisi Prius business to be done by Mr. Justice Le Blanc, he went into Wales, in the hope of being recruited by the air of his native mountains. He rallied a little, and came back to London on the approach of Hilary Term; but he was only able to take his seat in court for a single day.

As a last resource he was advised to try the waters of Bath. All would not do. The appointed hour for the termination of his career was at hand. He had now an attack of black jaundice, and it was found that his constitution was entirely exhausted. For several weeks he lay in bed, taking hardly any sleep or nourishment.

However, he suffered little pain; and having retained his mental faculties to the last, on the 4th of April, 1802, he expired, perfectly resigned to the will of God, and gratefully expressing his sense of the many blessings which he had enjoyed. His remains were conveyed to the family cemetery in the parish of Hanmer, and there deposited in the same grave with those of his beloved son. A splendid monument has been erected to his memory, containing a minute enumeration of his offices, and of his virtues. But a more simple and touching tribute to him was paid in a letter from his second son —to whom descended with his title his more amiable qualities:—

"He has left a name to which his family will look up with affectionate and honest pride, and which his countrymen will remember with gratitude and veneration as long as they shall continue duly to estimate the great and united principles of religion, law, and social order; no Welshman ever exhibited more eminently two traits of Cambria—warmth of heart and sincerity of character."

Anxious to suppress nothing that has been said in his praise, I add that the following character of his countryman, the learned civilian Sir Leoline Jenkins, was declared by a respectable writer to be equally applicable to the Cambrian Chief Justice of England:—

"Impartial in the administration of justice, without respect of persons or opinions, he was not only just between man and man in all ordinary cases, but also where his intimate friend, his patron, his enemy, or his own intimate friend interfered; for, in a word, he seemed to have loved justice as his life and the laws as his inheritance, and acted as if he always remembered whose image and commission he bore, and to whom he was accountable for the equity of his decrees. He was a man of excellent piety and unaffected devotion; he did not use his religion as a cloak to cover or keep him warm, but was early acquainted with religious principles and practices, and through the whole course of his life he was a serious and sincere Christian, of a strong and masculine piety, without any mixture of enthusiasm or superstition."

I must, however, in the discharge of my duty as a biographer, discriminate between his merits and his defects, and having done so, I can by no means consent to his being placed in the first rank of English Judges. That he was a truly religious and strictly moral man, might equally have been said of him had he, according to his original destination, spent his life as an attorney at Nantwich. When placed at the head of the common law as Chief Justice, he did, in the midst of some grumbling and sneering, command a considerable portion of public veneration. He was not only devoted to the discharge of his public duties and zealously desirous to do what was right, but his quickness of apprehension and his professional knowledge generally enabled him to come to a rapid and a sound decision in the various cases which he had to adjudicate. But he was far from being a scientific jurist; he could very imperfectly explain the rule of law by which he was governed, and when in private he was asked for his reasons, he would answer, "I vow to God that it is so."

He is said to have been a very great favorite with common juries, and, according to the slang of Westminster Hall, always *to have carried off the verdict.*[1] This was said to be because "he never fired over their heads, and he knew how to hit the bird in the eye." But he never combated the prejudices of the jury. He even encouraged that universal prejudice of the lower orders against attorneys, by which I have frequently seen the administration of justice perverted. Although bred in an attorney's office and long aspiring no higher than to be an attorney, he seemed to think the whole order pettifoggers, and their occupation almost necessarily disreputable. Instead of restricting his animadversions to peccant individuals, he extended an angry suspicion to a whole class, containing many men as honorable as himself, and much his superiors in education and manners. He talked of striking an attorney off the roll as he might

[1] *i. e.* that juries found upon the facts according to the opinion which he intimated to them. "His very failings won their liking; his prejudices were theirs; they with him loved to detect some knavish trick in an attorney; with him they held in pious horror the fashionable vices of the great, and the faults in his address against taste and correct idiom were beauties in their ears." Townsend, vol. i. p. 65

of dismissing a footman who had offended him. A naval officer having been arrested at a ball, Lord Kenyon at once jumped to the conclusion that this must have been by the orders of the plaintiff's attorney, saying that "it must be matter for consideration whether a practitioner who had so misconducted himself ought to remain on the rolls of the court." When a trial, expected to last the whole day, had unaccountably gone off, so that the following causes were struck out, the attorneys not having their witnesses in attendance, he advised that actions should be brought against all the attorneys for negligence.

"His hatred of dishonest practices," says a barrister who attended his Court, "had lit up a flame of indignation in his breast, but it was an *ignis fatuus* which led him into error. He gave too easy credit to accusation, and formed an opinion before he suffered his judgment to cool. He decided while under the influence of a heated temper, and often punished with unreflecting severity. The effect of this intemperate mode of administering justice my memory recalls with painful recollection in the case of a Mr. Lawless, an attorney and an honorable member of that profession. He was involved in the general and groundless proscription of the day. Complaint was made to the Court against him for some imputed misconduct, grounded on an affidavit which the event proved was a mass of misrepresentation and falsehood; but it being on oath and the charges serious, it was thought sufficient to entitle the party applying to a rule to show cause why Mr. Lawless should not answer the matters of the affidavit. Natural justice would point out, and the practice of the Court was conformable to it, that he should be heard in answer before he was convicted. For that purpose a day is given by the rule on which the party is to show cause, during which time everything is considered as suspended. This indulgence was refused to Mr. Lawless. Lord Kenyon, in addition to the common form of the Court's assent to the application 'take a rule to show cause,' added, 'and let Mr. Lawless be suspended from practicing until the rule is disposed of.' He happened to be present in Court when this unexampled judgment was pronounced, and

heard the sentence which led to his ruin. He rose in a state of the most bitter agitation: 'My Lord, I entreat you to recall that judgment; the charge is wholly unfounded; suspension will lead to my ruin; I have eighty causes in my office.' What was Lord Kenyon's reply to this supplicatory appeal to him? 'So much the worse for your clients, who have employed such a man! You shall remain suspended until the Court decides on the rule.' The rule came on to be heard at a subsequent day after the affidavits on the part of Mr. Lawless had been filed. The charges against him were found to be wholly without foundation, and the rule was accordingly discharged. Mr. Lawless was restored to his profession, but not to his character or peace of mind. He sank under the unmerited disgrace, and died of a broken heart."[1]

But although individuals might suffer from his precipitancy, Lord Kenyon's strong dislike of chicanery had a salutary effect upon the practice both of attorneys and barristers. Sham pleas, which had become much multiplied, were, by a threat to ask *who had signed them*, restrained to "judgment recovered," or "a horse given in satisfaction," and the misrepresentation of authorities in arguments at the bar was checked by a proposed rule of Court, requiring that "all cases should be cited on affidavit."

I ought gratefully to record that he was very kind to the students who attended the Courts. I cannot say that I ever heard (with one exception) of his inviting any of us to dinner, but I have a lively recollection that our box being near the bench at Guildhall—while the counsel were speaking he would bring the record to us and explain the issues joined upon it which the jury were to try.[2]

[1] Townsend, vol. i. p. 65.

[2] The following anecdote I have heard related of Lord Kenyon by and before very decent people, and it ought not to be lost, as it illustrates his character and the manners of the age in which he flourished. In those days retiring-rooms for the use of the Judges were unknown, and a porcelain vase, with a handle to it, was placed in a corner of the Court at the extremity of the bench. In the King's Bench, at Guildhall, the students' box (in which I myself have often sat) was very near this corner. One day a student who was taking notes, finding the ink in his little ink-bottle very thick, used the freedom secretly to discharge the whole of it into my Lord's

When placed at the head of the common law, Lord Kenyon affected to talk rather contumeliously of the Equity Courts. A suitor against whom he had decided, threatened to file a bill of discovery. "Go to Chancery!" exclaimed the Chief Justice, "*Abi in malam rem.*" Lord Thurlow, meeting him soon after, said to him, "Taffy, when did you first think that the Court of Chancery was such a *mala res?* I remember that you made *a very good thing of it.* And when did solicitors become so very odious as I am told you now represent them? When they gave you briefs you did not treat them as such atrocious ruffians."

We have nothing to say of Lord Kenyon as an orator or statesman more than as a philosopher. He had no high opinion of Mr. Pitt, to whom he was indebted for his elevation—and he complained that this leader, even after being in office, professed a love for parliamentary reform, and actually carried through Fox's Libel Bill. He declared that he himself was a loyal subject—not a political partisan. He expressed the most unbounded admiration of the character of George III. This he made the subject of his constant eulogy in his addresses to grand juries on the circuit—and, it being contrary to etiquette for the bar to be present on these occasions, so that the same address may be constantly repeated, he used to sound the royal praises nearly in the same language, and always to conclude with this quotation from Scripture: "Our good King may say with Samuel of

porcelain vase. His Lordship soon after having occasion to come to this corner, he was observed, in the course of a few moments, to become much disconcerted and distressed. In truth, discovering the liquid with which he was filling the vase to be of a jet black color, he thought the secretion indicated the sudden attack of some mortal disorder. In great confusion and anguish of mind he returned to his seat and attempted to resume the trial of the cause, but finding his hand to shake so much that he could not write, he said that on account of indisposition he was obliged to adjourn the Court. As he was led to his carriage by his servants, the luckless student came up and said to him, "My Lord, I hope your Lordship will excuse me, as I suspect that I am unfortunately the cause of your Lordship's apprehension." He then described what he had done, expressing deep contrition for his thoughtlessness and impertinence, and saying that he considered it his duty to relieve his Lordship's mind by this confession. *Lord Kenyon*. "Sir, you are a man of sense and a gentleman—dine with me on Sunday."

Lord Ellenborough pursued the same practice. I myself have often heard his large seals dangling from his watch-chain rattle against the vase, as he took it in his hand *coram populo*, decorously turning his back upon them.

old, 'Whose ox have I taken? Whose ass have I taken? Whom have I defrauded?'" In consequence of this warm attachment, George III. had a high opinion of Lord Kenyon, notwithstanding the jokes about his bad Latin and his bad temper, and the subject of Catholic Emancipation arising, addressed to him the following letter:—

"QUEEN'S HOUSE, *March 7, 1795*.

"The question that has been so improperly patronized by the Lord Lieutenant of Ireland seems to me to militate against the Coronation Oath and many existing statutes. I have therefore stated the accompanying queries on paper, to which I desire that Lord Kenyon will, after due consideration, state his opinion, and acquire the sentiments of the Attorney General on this most important subject."

The following was the reply:—

"Lord Kenyon received your Majesty's commands when he was in the country. He came immediately to town, and incloses what has occurred to him on the question. He has conferred with the Attorney General, and believes there is not any difference in opinion between them. They are neither of them apprized what was the extent of the alteration meditated to be made in Ireland.

"Your Majesty's most obliged and dutiful subject,

"KENYON."

"So long as the King's supremacy, and the doctrine, discipline, and government of the Church of England are preserved as the National Church, and the provision for its ministers kept as an appropriated fund, it seems that any ease given to sectarists would not militate against the Coronation Oath or the act of Union. Though the Test Act appears to be a very wise law, and in point of sound policy not to be departed from, yet it seems that it might be repealed or altered without any breach of the Coronation Oath or Act of Union."

Another interrogatory came from his Majesty to the Chief Justice:—

"The King is much pleased with the diligence shown by the Lord Kenyon in answering the question proposed

to him, and wishes his further opinion on the state of the question in Ireland, as drawn up by a Right Reverend Prelate of that kingdom, and on the Petition of the Roman Catholics."

The response was rather oracular:—

"The petition expresses apprehensions of 'proscription, persecution, and oppression.' All grounds of such apprehensions, if such there really are, may be safely removed, if the late benefits which the petition admits have not removed them, without endangering the Established Church, or violating the Coronation Oath."

It was greatly to the credit of Lord Kenyon that he went so far in combating the mischievous notions that had been infused in the royal mind; and if the opinion then expressed had been acted upon at the time of the Irish Union, it would have saved a world of woe to the empire.

Lord Kenyon, like all the other judges of his day, highly approved of the severity of the penal code, and would have thought the safety of the state endangered by taking away the capital sentence from forgery, or from stealing to the amount of five shillings in a shop, yet he was not such a "hanging judge" as some of his colleagues.[1] A barrister once related the following anecdote in a debate in the House of Commons:—

"On the Home Circuit, a young woman was tried for stealing to the amount of forty shillings in a dwelling-house. It was her first offense, and was attended with many circumstances of extenuation. The prosecutor came forward, as he said, from a sense of duty; the witnesses very reluctantly gave their evidence; and the jury still more reluctantly their verdict of *guilty*. The judge passed sentence of death. The unhappy prisoner instantly fell lifeless at the bar. Lord Kenyon, whose sensibility was not impaired by the sad duties of his office, cried out in great agitation, from the bench, 'I don't mean to hang you! will nobody tell her I don't mean to hang her?' I then felt, as I now feel, that this was passing sentence, not on the prisoner, but on the law."

Lord Kenyon very seldom wrote his judgments. In

[1] Edward Morris, Esq., afterwards a Master in Chancery.

delivering them his language was sometimes forcible, but arranged without the slighest regard to the rules of composition. In spite of the softening efforts of his reporters in harmonizing his mixed metaphors, we have specimens of his style preserving a great share of its raciness. Thus he fortifies one of his favorite maxims, which Lord Eldon says was constantly in his mouth: *Amo stare supra antiquas vias*[1]—"If an individual can *break down* any of these safeguards which the constitution has so wisely and so cautiously erected, by *poisoning* the minds of the jury at a time when they are called upon to decide, he will *stab* the administration of justice in its most vital parts." But some of the stories circulated respecting his historical allusions and quotations must have been exaggerations or pure inventions. Thus Coleridge, in his *Table Talk*, relates that Lord Kenyon, in addressing the jury in a blasphemy case, after pointing out several early Christians who had adorned the Gospel, added: "Above all, gentlemen, need I name to you the Emperor Julian, who was so celebrated for the practice of every Christian virtue that he was called JULIAN THE APOSTLE?" So in the collection of legal anecdotes, entitled *Westminster Hall*, the noble and learned lord is represented as concluding an elaborate address, on dismissing a grand jury, with the following valediction: "Having thus discharged your conscience, gentlemen, you may retire to your homes in peace, with the delightful consciousness of having performed your duties well, and may lay your heads upon your pillows, saying to yourselves 'Aut Cæsar aut nullus.'" In exposing the falsehood of a witness, he is supposed to have said, "The allegation is as far from truth 'as old Booterium from the Northern Main'—a line I have heard or met with God knows *wheer*" (his mode of pronouncing *where*).[2]

Before parting with Lord Kenyon's public character, I ought to mention that although he never returned to poetry after his early flight during his apprenticeship, he left reports of cases begun by him while a student, and these being edited and published by his relation, Mr. Job Hammer, inscribe his name in the list of "noble

[1] Twiss's Life of Lord Eldon. [2] Townsend, vol. i. p. 21.

and royal authors," but I cannot say that they were of much value to the profession, or that they confer great glory upon his order.

I have enlivened former Lives of Chancellors and Chief Justices by their *facetiæ*—but I know nothing of this sort, either by books or tradition, attributed to Lord Kenyon, except his address to Mr. Abbott (afterwards Speaker and Lord Colchester). This pompous little man, while holding under him the office of Clerk of the Rules, was proceeding, as chairman of a committee of the House of Commons, to examine him very minutely upon the delicate subject of the perquisites of the Chief Justice. The offended Judge having demurred to answer any further, and being reminded in a solemn manner of the authority of the House of Commons, at last broke out, " Sir, tell the House of Commons that I will not be yelped at by my own turnspit." Of his other recorded sayings I can find nothing more pointed than that in complimenting Sergeant Shepherd, he said, "He has no rubbish in his head"—that a flippant observation being made by a witness respecting a letter supposed to come from a young lady, he said, " Turn the minion out of court"—and that when he detected the trick of an attorney to delay a trial, he said, " This is the last hair in the tail of procrastination, and it must be plucked out."

When not engaged in his judicial duties, Lord Kenyon led the life of a recluse. He occupied a large, gloomy house in Lincoln's Inn Fields, in which I have seen merry doings when it was afterwards transferred to the Verulam Club. I have often heard this traditional description of the mansion in his time—" All the year through, it is LENT in the kitchen, and PASSION WEEK in the parlor." Some one having mentioned, that although the fire was very dull in the kitchen grate, the *spits* were always bright—" It is quite irrelevant," said Jekyll, " to talk about the *spits*, for *nothing* TURNS *upon them*." Although there was probably a good deal of exaggeration in these jests, there can be no doubt that Lord Kenyon deserved censure for the meanness of his mode of living, and his disregard of decent hospitality. The State conferred the emoluments of Chief Justice upon him as a trustee so far as that he should support

the dignity of his station—that he should bring together at his board the deserving members of the important profession over which he was appointed to preside—and that he should represent the country to illustrious foreigners who came to study our judicial institutions. Lord Kenyon's dinner-parties consisted of himself, Lady Kenyon, his children, and now and then an old attorney; and the very moderate weekly bills for such a *ménage* being paid (which they were most punctually), the accumulations were vested in the three per cents. till they were sufficient to buy another Welsh farm. Lord Kenyon's hours would not well have suited fashionable company; for, rising at six in the morning, he and all his household were in bed by ten at night. He is said to have built a comfortable house at Gredington, to which he retired in the long vacation. Under the name of villa, he had a miserable tumble-down farm-house at the Marsh Gate, about half a mile on this side of Richmond, which is still pointed out as a proof of his economy. The walls are moldering, and by way of an ornamental piece of water may be seen near the door a muddy duck-pond. In Lord Kenyon's time it was guarded by a half-starved Welsh terrier, which was elevated into a higher order of the canine race when the following lines were applied to the establishment;—

> "Benighted wanderers the forest o'er
> Cursed the saved candle and unopened door;
> While the gaunt mastiff growling at the gate
> Affrights the beggar whom he longs to eat."

To this place the family came regularly on Saturday evenings, after a slight repast in town, bringing with them a shoulder and sometimes a leg of mutton, which served them for their Sunday dinner. On Monday morning the Chief Justice was up with the lark, and back in Lincoln's Inn Fields before the lazy Londoners were stirring. We have the following amusing account of one of these journeys from a barrister who was patronized by him:—

"An old coach came rumbling along and overtook me on the road to London from Richmond. It was one of those vehicles that reminded me of a Duke or Marquis under the old régime of France, rivaling in

indigence and want the faded finery of his wardrobe. Its coronet was scarcely discoverable, and its gildings were mouldy; yet it seemed tenacious of what little remained of its dignity, and unwilling to subside into a mere hackney coach. I believe I might have looked rather wistfully at it (I was then a poor barrister, briefless and speechless, in the back rows of the court), when I perceived a head with a red nightcap suddenly pop out from the window, and heard myself addressed by name, with the offer of a cast to London. It was Lord Kenyon. He made the journey quite delightful by charming anecdotes of the bar in his own time—of Jack Lee, Wallace, Bower, Mingay, Howorth, the last of whom was drowned, he said, on a Sunday water-excursion in the Thames. The good old man was evidently affected by the regrets which his name awakened, and they seemed the more poignant because his friend was called to his account in an act of profanation. 'But it was the sin of a good man,' he observed, 'and Sunday was the only day a lawyer in full business could spare for his recreation.'"[1]

The red nightcap had been worn to save his wig. He was curiously economical about the adornment of his head. It was observed for a number of years before he died, that he had two hats and two wigs—of the hats and the wigs one was dreadfully old and shabby, the other comparatively spruce. He always carried into Court with him the very old hat and the comparatively spruce wig, or the very old wig and the comparatively spruce hat. On the days of the very old hat and the comparatively spruce wig he shoved his hat under the bench, and displayed his wig; but on the days of the very old wig and the comparatively spruce hat, he always continued covered. I have a very lively recollection of having often seen him sitting with his hat over his wig; but I was not then aware of the Rule of Court by which he was governed on this point.[2]

The rest of Lord Kenyon's apparel was in perfect keep-

[1] Clubs of London.

[2] Till the middle of the last century the Chancellor is always represented with his hat on. In early times it was round and conical; and such was Lord Keeper Williams's, although he was a bishop. In Anne's reign three-cornered hats came up. The black cap of the common law judges,

ing with his *coiffure*. "On entering Guildhall," says Espinasse, "Pope's lines in the Dunciad came across me, and I quoted them involuntarily:—

> 'Known by the band and suit which Settle wore,
> His only suit for twice three years and more.'

"Erskine would declare that he remembered the great-coat at least a dozen years, and Erskine did not exaggerate the claims of the coat to antiquity. When I last saw the learned Lord, he had been Chief Justice for nearly fourteen years; and his coat seemed coeval with his appointment to the office. It must have been originally black, but time had mellowed it down to the appearance of a sober green, which was what Erskine meant by his allusion to its color. I have seen him sit at Guildhall in the month of July in a pair of black leather breeches; and the exhibition of shoes frequently soled afforded equal proof of the attention which he paid to economy in every article of his dress."

In winter he seems to have indulged in warmer garments; for James Smith, author of the "Rejected Addresses," describing him in Michaelmas term, says: "But we should not have his dress complete were we to omit the black *velvet smalls* worn for many years, and threadbare by constant friction, which he used to rub with most painful assiduity when catechizing the witnesses. The pocket-handkerchief found in the second-hand silk waistcoat which he bought from Lord Stormont's valet being worn out, he would not go to the expense of another, and, using his fingers instead, he wiped them upon his middle garment, whether of leather or of velvet."

According to other accounts this change in his habits did not begin till the imposition of the Income Tax by Mr. Pitt. Said Rogers the poet, "Lord Ellenborough had infinite wit. When the Income Tax was imposed, he stated that Lord Kenyon (who was not very nice in his habits) intended, in consequence of it, to lay down his pocket-handkerchief." [1]

which has remained unchanged for many ages, is square. With this they used always to be *covered;* but they wear it now only when passing sentence of death.

[1] Table Table of Samuel Rogers, p. 196.

If we can believe his immediate successor, who had a fair character for veracity, Lord Kenyon studied economy even in the hatchment put up over his house in Lincoln's Inn Fields after his death. The motto was certainly found to be "MORS JANUA VITA"—this being at first supposed to be the mistake of the painter. But when it was mentioned to Lord Ellenborough, "Mistake!" exclaimed his Lordship, "it is no mistake. The considerate testator left particular directions in his will that the estate should not be burdened with the expense of a *dipthong!*"

Accordingly he had the glory of dying very rich. After the loss of his eldest son, he said with great emotion to Mr. Justice Allan Park, who repeated the words soon after to me—"How delighted George would be to take his poor brother from the earth, and restore him to life, although he receives £250,000 by his decease!"

He was succeeded by his son George, a most warm-hearted, excellent man—to whom it may be easily forgiven that he considers the founder of his house a model of perfection, not only in law, religion, and morals, but in manners, habits, and accomplishments. To spare the feelings of one so pious, I resolve that this Memoir shall not be published in his lifetime, although I believe that it is chargeable with a desire to *extenuate* rather than to *set down aught in malice*.[1]

I cannot say with a good conscience that the first Lord Kenyon was highly educated and every way qualified to fill the office of Chief Justice: but he was earnestly desirous to do what was right in it; and he possessed virtues which not only must endear him to his own descendants, but make his memory be respected by his country.

[1] This Memoir was written in the lifetime of George, the second Lord Kenyon, with whom I was in habits of familiar intercourse. He died 1 Feb. 1855, and was succeeded by his eldest son Lloyd, the third Lord, who I have heard does credit to the name he bears, but with whom I have not the honor of any acquaintance.

CHAPTER XLVI.

LIFE OF LORD ELLENBOROUGH FROM HIS BIRTH TILL HIS MARRIAGE.[1]

I NOW come to a Chief Justice with whom I have had many a personal conflict, and from whom for several years I experienced very rough treatment, but for whose memory I entertain the highest respect. He was a man of gigantic intellect; he had the advantage of the very best education which England could bestow; he was not only a consummate master of his own profession, but well initiated in mathematical science and one of the best classical scholars of his day; he had great faults, but they were consistent with the qualities essentially required to enable him to fill his high office with applause. ELLENBOROUGH was a *real* CHIEF—such as the rising generation of lawyers may read of and figure to themselves in imagination, but may never behold to dread or to admire.

When I first entered Westminster Hall in my wig and gown, I there found him "the monarch of all he surveyed," and, at this distance of time, I can hardly recollect without awe his appearance and his manner as he ruled over his submissive subjects. But I must now trace his progress till he reached this elevation.

His lot by birth was highly favorable to his gaining distinction in the world—affording him the best facilities and the strongest incentives for exertion. He was the younger son of an English prelate of very great learning and very little wealth. His ancestors had long been "statesmen" in the county of Westmoreland—that is, substantial yeomen cultivating a farm which was their own property, and which was transmitted without ad-

[1] When I wrote this Memoir I was still Chancellor of the Duchy of Lancaster, and a member of Lord John Russell's Cabinet.

dition or diminution for many generations. At last one of them was admitted to holy orders without having been at any university, and acted as the curate of the mountainous parish in which his patrimony lay. His son was the famous Dr. Edmund Law, Bishop of Carlisle, who having been sent early to St. John's College, Cambridge, highly distinguished himself there, was elected a fellow of Christ's College, and became one of the shining lights of that society celebrated under the name of the Zodiac. Before being raised to the episcopal bench, he was successively rector of Graystock and of Salkeld, Master of Peterhouse, and a Prebendary of Durham. In politics, like many dignitaries of that day, he was a good Whig, although almost all the inferior clergy were Tories, or rather Jacobites. In religion he strongly inclined to the low Church party, and was suspected of being somewhat latitudinarian in some of the articles of his faith. He published various theological works, the most famous of which was a treatise "on the Intermediate State"—inculcating the doctrine that the soul cannot be in active existence when separated from the body, and that it is therefore in a continuous sleep between death and the general resurrection.[1] He was married to Mary, daughter of John Christian, Esq., of Unerigg, in Cumberland, and by her had a family of twelve children, among whom were two Bishops and a Chief Justice.

Edward, the subject of this memoir, was one of the youngest of them, and was born in the parsonage of Salkeld on the 16th of November, 1750. Resembling his mother in features, he is said to have derived from her likewise his manners and the characteristic qualities of his mind. If the following description of the good Bishop be correct, they could not have descended upon the sarcastic Chief Justice *ex parte paternâ*:—

"His Lordship was a man of great softness of man-

[1] It is stated by Townsend (vol. i. 301) and other biographers, that he was likewise author of "A Serious Call to the Unconverted," but this very lively work, which should rather be designated "True Religion made entertaining," was written by WILLIAM LAW, born in Northamptonshire, and educated at Oxford, who was tutor to the father of Gibbon the historian, and ended his career by becoming a disciple of Jacob Behmen.—*Gibbon's Miscellaneous Works; Boswell's Life of Johnson.*

ners, and of the mildest and most tranquil disposition. His voice was never raised above its ordinary pitch. His countenance seemed never to have been ruffled; it invariably preserved the same kind and composed aspect, truly indicating the calmness and benignity of his temper. His fault was too a great degree of inaction and facility in his public station. The bashfulness of his nature, *with an extreme unwillingness to give pain*, rendered him sometimes less firm and efficient in the administration of authority that was requisite."[1]

Yet our hero's "Christian" blood will not account for his *irascibility*, as he himself used to declare that in temper his mother was as admirable as the Bishop his father, and when he had reached old age, he often expressed a fond respect for her memory.

Little Ned, although often naughty, was the chief favorite of both his parents. He remained at home till he was eight years old, and not only his nurse but the whole family spoke their native dialect in such force, that he retained the Cumbrian pronounciation and accent to his dying hour.[2] Soon after he had been taught to read, he was sent into Norfolk to live with his maternal uncle, the Rev. Humphrey Christian, a clergyman settled at Docking, in that county. Having been a short time at a school of some repute at Bury St. Edmunds, he was removed to the noble foundation of the Charter-house in London.[3] To this solid acquisitions there he ever gratefully ascribed his subsequent eminence in public life, and there, by the special directions of his will, his remains now repose near to those of the founder.

Law continued at the Charter-house six years, and rose to be Captain of the school. He used to say that while enjoying this dignity he felt himself a much more important character than when he rose to be Chief Justice of England and a Cabinet Minister. At this early period he displayed the same vigor of character

[1] Archdeacon Paley.

[2] For example, he called the days of the week "Soonda, Moonda, Toozeda, Wenzeda," &c.

[3] He was admitted a Scholar on the 22d of January, 1761, upon the nomination of the Bishop of London (Dr. Sherlock), and elected an Exhibitioner 2d May, 1767.

and the same mixture of arrogance and *bonhomie* which afterwards distinguished him. He was described by a classfellow who had alternately experienced harshness and kindness from him, as "a bluff, burly boy, at once moody and good-natured—ever ready to inflict a blow or perform an exercise for his schoolfellows."[1]

When he had reached the age of eighteen he was sent to Cambridge and entered at Peterhouse, of which his father was still master. He is said now to have occasionally indulged pretty freely in the dissipation which was then considered compatible with a vigorous application to study, but he never wasted his time in idle amusements; over his wine he would discuss the merits of a classical author, or the mode of working a mathematical problem; and when his head was cleared by a cup of strong tea he set doggedly to work that he might outstrip those who confined themselves to this thin potation.

He belonged to a club of which William Coxe, then an under-graduate, afterwards an archdeacon, was the historiographer. The destined eulogist of Sir Robert Walpole, thus, in flattering terms, described the future Chief Justice:—

"Philotes bears the first rank in this our society. Of a warm and generous disposition, he breathes all the animation of youth and the spirit of freedom. His thoughts and conceptions are uncommonly great and striking; his language and expressions are strong and nervous, and partake of the color of his sentiments. As all his views are honest, and his intentions direct, he scorns to disguise his feelings or palliate his sentiments. This disposition has been productive of uneasiness to himself and to his friends, for his open and unsuspecting temper leads him to use a warmth of expression which sometimes assumes the appearance of *fierté*. This has frequently disgusted his acquaintance; but his friends know the goodness of his heart, and pardon a foible that arises from the candor and openness of his temper. Indeed, he never fails, when the heat of conversation is over, and when his mind becomes cool and dispassionate, to acknowledge the error of his nature, and, like a Roman

[1] Capel Lofft.

Catholic, claim an absolution for past as well as future transgressions. Active and enterprising, he pursues with eagerness whatever strikes him most forcibly. His studies resemble the warmth of his disposition; struck with the great and sublime, his taste, though elegant and refined, prefers the glowing and animated conceptions of a Tacitus to the soft and more delicate graces of a Tully."

I am afraid we must infer that, in conversation, he was rather overbearing, and that the love of sarcasm, which never left him, was then uncontrolled and made him generally unpopular. However, his straightforward, manly character, joined to his brilliant talents, procured him, while at the University, friends as well as admirers: among whom are to be reckoned Vicary Gibbs, Simon Le Blanc, and Souldan Lawrence, afterwards his rivals at the bar and associates on the bench. While an undergraduate, by exercising the invaluable virtue of self-denial, he was upon the whole very industrious, although he loved society, and said "the greatest struggle he ever made was in leaving a pleasant party and retiring to his room to read."

When the time approached for taking his bachelor's degree, it was confidently expected that he would be senior wrangler and first medalist. His elder brother, afterwards Bishop of Elphin, to whom he was considered much superior, had been second wrangler in a good year. Edward, however, was decidedly surpassed in the mathematical examination by two men much inferior to him in intellect, but of more steady application. His disappointment was imputed to excess of confidence. He himself took it deeply to heart, and he pretended to be as much ashamed of being third wrangler as if he had got the "wooden spoon." His classical acquirements did carry off the first medal; but his pride was by no means assuaged, and he continued for the rest of his days to scoff at academical honors. This feeling was embittered by his writing, the two following years, for bachelor's prizes, and gaining nothing beyond fifteen guineas, given by the members for the second-best Latin Essay. Although his spoken eloquence was vigorous and impressive, he never could produce anything very striking when

sitting down, unexcited, at his desk, and his written compositions, whether in Latin or English, were never remarkable either for lucid arrangement or purity of style.

He continued to reside at Cambridge two years after taking his bachelor's degree, with a view to a fellowship; and these he used to describe as the least agreeable and least profitable of his life. He still had fits of application to severe study, but the greatest part of his time he now devoted to light literature, taking special pleasure in novels. He said he abominated such as ended unhappily, but he read all indiscriminately, and while he luxuriated in Fielding and Smollett, Mrs. Sheridan's *Sidney Biddulph* was said to have drawn "iron tears down Pluto's cheek."

His father had much wished to have all his sons in the church, but Edward was earnestly bent upon trying his fortune at the bar, and had obtained leave to enter himself of Lincoln's Inn,[1] on the express condition that he was not to begin the study of the law till he had obtained a fellowship, and that, failing this, he should still take holy orders—so that he might have something to depend upon for a subsistence beyond the precarious hope of fees. Meeting with some disappointments in academical promotion, he was strenuously urged to enter the Church, his father having become a bishop, with the power of giving him a living among the fells of Westmoreland; but at last he was elected a fellow of Trinity College, and the Chief Justiceship was open to him.

It was a fortunate circumstance for him that he embraced the profession of the law *against* the earnest wishes of a father whom he sincerely respected and loved. He thus undertook a tremendous responsibility upon himself, and had the most powerful motives for

[1] LINCOLN'S INN.

"EDWARD LAW, Gentleman of St Peter's College, Cambridge, third son of the Right Revd Father in God, Edmond Lord Bishop of Carlisle, is admitted into the Society of this Inn the 10th day of June, in the Ninth year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and in the year of our Lord 1769, and hath thereupon paid to the use of this Society the sum of Three pounds three shillings and four pence. Admitted by RD. SPOONER."

exertion, that he might justify his own opinion and soothe the feelings of him whose latter days he hoped to see tranquil and happy. He spurned the idea of retreating upon the Church after a repulse by the Law, and he started with the dogged resolution to overcome every difficulty which he might encounter in his progress. Having obtained a small set of chambers in Lincoln's Inn, he forthwith in good earnest began the study of jurisprudence, not contenting himself with the lucid page of Blackstone and the elegant judgments of Mansfield, but vigorously submitting to whatever was most wearisome and most revolting if considered necessary to qualify him for practice at the English bar. Determined to be a good artificer, he did not dread "the smoke and tarnish of the furnace."

"Moots" and "Readings" having long fallen into disuse, the substituted system of *pupilizing* had been firmly established—well adapted to gain a knowledge of practice, but not of principles. A student intended for the common law courts was expected to work at least two years in the office of a special pleader, copying precedents, drawing declarations and pleas, and having an opportunity of seeing the run of his master's business. The most distinguished instructor in this line at that time was George Wood, on whom Lord Mansfield made the celebrated special-pleading joke about his horse *demurring* when he should have *gone to the country*.[1] In his office, Law, by great interest, obtained a desk, and he could soon recite the "money counts" as readily as his favorite poem of ABSALOM AND ACHITOPHEL. We may form a lively notion of his habits and his sentiments at this period from the following letter which, at the conclusion of a sitting of many hours in Mr. Wood's

[1] George, though a subtle pleader, was very ignorant of *horse flesh*, and had been cruelly cheated in the purchase of a horse on which he had intended to ride the circuit. He brought an action on the warranty that the horse was "a good roadster, and free from vice." At the trial before Lord Mansfield, it appeared that when the plaintiff mounted at the stables in London, with the intention of proceeding to Barnet, nothing could induce the animal to move forward a single step. On hearing this evidence, the Chief Justice with much gravity exclaimed, "Who would have supposed that Mr. Wood's horse would have *demurred* when he ought to have *gone to the country?*" Any attempt to explain this excellent joke to *lay gents* would be vain, and to *lawyers* would be superfluous.

chambers, we wrote to his friend Coxe, then a private tutor to a young nobleman :—

"June 18th, 1773—Temple, Friday night.

"After holding a pen most of the day in the service of my profession, I will use it a few minutes longer in that of friendship. I thank you, my dearest friend, for this and every proof of confidence and affection. Let us cheerfully push our way in our different lines : the path of neither of us is strewed with roses, but they will terminate in happiness and honor. I cannot, however, now and then help sighing when I think how inglorious an apprenticeship we both of us serve to ambition—while you teach a child his rudiments and I drudge at the pen for attorneys. But if knowledge and a respectable situation are to be purchased only on these terms, I, for my part, can readily say 'hac mercede placet.' Do not commend my industry too soon ; application wears for me at present the charm of novelty ; upon a longer acquaintance I may grow tired of it."

On the contrary, he became fonder and fonder of it. The tautological jargon still used in English law proceedings is disgusting enough, but in the exquisite logic of special pleading rightly understood, there is much to gratify an acute and vigorous understanding. The methods by which it separates the law from the facts, and having ascertained the real question in controversy between the parties, refers the decision of it either to the judges or to the jury, favorably distinguish our procedure from that of any other civilized nation, and have enabled us to boast of a highly satisfactory administration of justice without a scientific legal code.

Law continued working very hard as a special-pleading pupil for two years. During this period he not only grew to be a great favorite with his instructor, but the attorneys who frequented Mr. Wood's chambers became acquainted with his assiduity and skill. The pleadings settled by Mr. Wood and the opinions signed by him were generally written in a very large, bold, pot-hook hand, which they discovered to be Mr. Law's, and although he was much too independent and honorable to resort to any evil arts for the purpose of ingratiating himself, and he was chargeable rather with *hauteur* than

with *huggery*, he sometimes got into conversation with the attorneys, and he raised in their minds a very high opinion of his proficiency as well as of his industry.

When he was to cease to be *in statu pupillari* the question arose whether he should immediately he called to the bar, or follow the course recently introduced of practicing as a special pleader under the bar—confining himself entirely to chamber practice—drawing law papers and giving opinions to the attorneys in cases of smaller consequence—making his own charges for his work, instead of receiving the spontaneous *quiddam honorarium*, which to a barrister must not be below a well-known *minimum*, but, being above that, he is not at liberty to complain of, however inadequate it may appear. Law was conscious of considerable powers of elocution which he was impatient to display. He not only belonged to a private debating club for students in the Temple, but he had gained applause by an oration at Coachmakers' Hall, then open to spouters in every rank of life. Nevertheless, sacrificing the chance of present *éclat*, he prudently resolved to condemn himself to a period of useful obscurity, and he commenced "special pleader under the bar." He had great success, and business flowed in upon him, particularly from the agents of the Northern attorneys. His charge for answering cases was very small, but he put a modest estimate upon the real value of the commodity which he sold. Many years afterwards, when he was presiding at Nisi Prius, a wrong-headed attorney pleading his own cause, and being overruled on some untenable points which he took, at last impertinently observed—"My Lord, my Lord, although your Lordship is so great a man now, I remember the time when I could have got your opinion for five shillings." *Ellenborough, C. J.:* "Sir, I daresay it was not worth the money!" This was a far better mode of vindicating the dignity of the Judge and carrying along with him the sympathies of the audience, than fining the delinquent or threatening to commit him for a contempt of court—the course which would probably have been followed by the hasty Kenyon.

Under the bar Law soon made a handsome income; Cambridge men studying for the legal profession were

eager to become his pupils at the established fee of one hundred guineas a year or two hundred guineas for three years; and when he made out his bills at Christmas he found that he was doing better than any barrister who could be considered his contemporary—with the single exception of Erskine.

During five long and irksome years did Law continue to devote himself to this drudgery; but his perseverance was amply rewarded, for he not only gained a reputation which was sure to start him with full business at the bar, but he acquired a thorough knowledge of his craft, which few possess who, after a mere course of solitary study, plunge into forensic wrangling.

In Hilary Term, 1780, he was called to the bar by the Honorable Society of Lincoln's Inn. Generally speaking, success cannot be anticipated with any confidence for a young barrister, however well qualified to succeed he may appear to be; and our profession well illustrates the Scriptural saying, "The race is not always to the swift, nor the battle to the strong, nor bread to men of understanding, nor honor to the men of skill, but time and *chance* happeneth to them all." Nevertheless Law neither felt, nor had reason to feel, the slightest misgivings when he put on his gown, and started for the prize of Chief Justice. Lord Camden and other great lawyers had languished for many years without any opportunity of displaying their acquirements. Law had several retainers given to him by great Northern attorneys on the very day of his call; and not only from family connection, but from his reputation as a special pleader, which had long crossed the Trent, he was sure of finding himself at once in respectable practice. He disdained the notion of attending Quarter Sessions, and he always was inclined to sneer at young gentlemen who tried to force themselves into notice by writing a law book. He calculated that by his knowledge and his eloquence he must speedily be at the head at the Northern Circuit. In general those who practice under the bar as special pleaders do not aspire higher than holding second briefs in a stuff gown, with an *arrière pensée* of being raised to be a puisne judge. The ardor of our *débutant* had not been extinguished or chilled by

his long apprenticeship, and he already heard the rustling of his silk gown, and imagined himself wearing the collar of SS, appropriated to the Chief Justice of England.

In the beginning of March, 1780, he joined the Circuit at York, causing considerable alarm to those established in business, and curiosity among the disinterested. Without any suspicion of improper arts being used by himself, or of improper influence being used in his favor by others, at the opening of the Nisi Prius Court a large pile of briefs lay before him. His manner was somewhat rough, and he was apt to get into altercations with his opponents and with the judge; but his strong manly sense, and his familiar knowledge of his profession, inspired confidence into those who employed him; and the mingled powers of humor and of sarcasm which he displayed soon gave him a distinguished position in the Circuit Grand Court held *foribus clausis* among the barristers themselves, in which toasts were given, speeches were made, and verses were recited, not altogether fit for the vulgar ear.

At this period there was never more than two or three King's counsel on any circuit; and a silk gown was a distinction to the wearer, not only among his brethren, but in general society—placing him above the gentry of the country. The Northern leaders then were Wallace and Lee, whom no attorney approached without being uncovered. They were men of great eminence from their personal qualifications, and it was expected that they would speedily fill the highest judicial offices. They were before long taken from the circuit, to the joy of their juniors—Wallace being made Attorney General, and Lee Solicitor General; but, unluckily for them, they adhered to Mr. Fox and Lord North, and the permanent ascendency of William Pitt, after he had crushed the coalition, was fatal to their further advancement. Neither of them having reached the Bench, their their traditionary fame, transmitted through several generations of lawyers, is now dying away.[1]

[1] Wallace's son was made a peer, by the title of Lord Wallace, of Knaresdale, in 1828, but he died without issue in 1844. Lee, though he filled a great space in the public eye while living, has not in any way added to the permanent "Grandeur of the Law."

LORD ELLENBOROUGH.

Till the beginning of the 19th century the Northern Circuit, in the spring, was confined to Yorkshire and Lancashire. In early times the distance of the four hyperborean counties from the metropolis, and the badness of the roads, rendered it impossible to hold assizes in any of them during the interval between Hilary and Easter Terms—so that a man committed for murder in Durham, Northumberland, Cumberland, or Westmoreland might lie in jail near a twelvemonth before he was brought to trial. At the accession of George III. there were turnpike trusts in the remotest parts of the kingdom, and post-horses were found wherever they were desired; but the usual superstitious adherence to ancient customs when the reason for them has ceased, long obstructed every attempt to improve the administration of justice in England.

The business being finished at York, Mr. Law proceeded with his brethren to Lancaster, where the list of civil causes was still scanty, although all that arose within the County Palatine were to be tried here. Liverpool, compared with what it has since become, might have been considered a fishing village; Manchester had not reached a fourth of its present population; and the sites of many towns, which now by their smoke darken the Lancastrian air for miles around, were then green fields, pastured by cattle, or heathery moors, valuable only for breeding grouse. Here our junior did not fare so well as at York; yet he could not have been indicted at the Grand Court for carrying *unam purpuream baggam flaccescentem omnino inanitatis causâ;*[1] for although Wallace, who was nearly connected with him by marriage, had made him a present of a bag—an honor of which no junior before could ever boast on his first circuit—its flaccidity was swelled out by several briefs, which he received from an attorney of Ashton-under-Lyne, who used afterwards boastingly to say, "*I made Law Chief Justice.*"[2]

[1] These mock indictments were still often in Latin, notwithstanding the statute requiring all proceedings in Courts of Justice to be in the English tongue, it having been ruled that "no statute is binding on the Grand Court of the Northern Circuit in which this Court is not specially mentioned."

[2] Now-a-days any young barrister buys a bag, and carries it as soon after he is called to the bar as he likes; but when I was called to the bar, and

The assizes being speedily over, Mr. Law returned to London well pleased with his success, and with his prospects. But in the two following terms he never opened his mouth in court unless to make a motion of course—and he was rather disheartened. It was not till years afterwards, when the attention of the nation was fixed upon him as counsel for Mr. Hastings, that his merits were appreciated by attorneys in London.

When the summer assizes came round he visited all the six counties which form the Northern Circuit. In each of them he had a considerable portion of business—and at Carlisle more than any other junior, his own qualifications as a lawyer being backed by the respect entertained for the venerable Bishop of the diocese.

During seven years he continued to fight his way on the circuit in a stuff gown; and towards the end of this period he had gained such reputation in addressing juries as nearly to throw out of business several black-letter special pleaders, who were his seniors, and could not be retained along with him when it was intended that he should lead the cause. There was, therefore, a general wish among his brother circuiteers that he should have silk, and a representation upon the subject was made to Lord Chancellor Thurlow; but some difficulty arose about conferring this mark of royal favor upon one who was considered a decided Whig. Although measures to encourage free trade, for the improvement of the law, and even for a reform of Parliament, were brought forward by the prime minister, the memory of the "Coalition" was green, and the thirst for revenge upon all who had encouraged the attempt to put a force upon the Crown in the choice of ministers was still unsatiated. Thurlow, who soon after, during the King's insanity, intrigued with the Whigs that he himself might retain

long after, the privilege of carrying a bag was strictly confined to those who had received one from a King's counsel. The King's counsel, then few in number, were considered officers of the Crown, and they not only had a salary of £40 a year, but an annual allowance of paper, pens, and purple bags. These they distributed among juniors who had made such progress as not to be able to carry their briefs conveniently in their hands. All these salaries and perquisites were ruthlessly swept away in 1830 by Lord Grey's reforming Government—and it was full time—as King's counsel had become a mere grade in the profession, comprehending a very large number of its members.

the Great Seal under them, had down to this time testified peculiar enmity to the whole of them as a party and individually. However, the urgency for Law's promotion increasing, and the Judges who went the Northern Circuit joining in the application, it could no longer be refused.

Before we behold him as a public character, let us take a glance at him in domestic life. It was said that he had rather freely indulged in the gallantries of youth, and that he even for a time followed the example of the then Lord High Chancellor of Great Britain, the great prop of the Church, and chief distributor of ecclesiastical preferment, who openly kept a mistress.[1] But however this may be, Law was not supposed to have exceeded what was permitted by the license of those times, and he was happily forever rescued from the peril of scandal by being accidentally introduced to the beautiful Miss Towry, daughter of Mr. Towry, a commissioner of the navy, and a gentleman of good family. I myself recollect her become a mature matron, still a very fine woman, with regular features, and a roseate complexion; but when she first appeared, she excited admiration almost unprecedented. Amongst many others, Law came, saw, and *was* conquered. Considering his ungainly figure and awkward address, it seems wonderful that he should have aspired to her hand among a crowd of competitors—particularly as it was understood that she had already refused very tempting proposals. But he ever felt great confidence in himself, whatever he undertook; he now said, "Faint heart never won fair lady," and after he had paid her devoted attention for a few weeks, he asked her father's leave to address her. The worthy commissioner gave his consent, having heard that this suitor was considered the most rising lawyer in Westminster Hall. But the young lady being interrogated, answered by a decided negative. Still the lover was undismayed, even (as it is said) after a third rebuff. At last, by the charms of his conversation, and by the eulogiums of all her relations, who thought she was repell-

[1] Mrs. Harvey, celebrated in the "Rolliad," and said to have been much courted by the clergy.

ing a desirable alliance, her aversion was softened, and she became tenderly attached to him.

The marriage took place on the 17th day of October, 1789, and proved most auspicious. Mrs. Law retained the beauty of Miss Towry; and such admiration did it continue to excite, that she was not only followed at balls and assemblies, but strangers used to collect in Bloomsbury Square to gaze at her as she watered the flowers which stood in her balcony. But no jealousy was excited in the mind of the husband even when Princes of the blood fluttered round her. For many years the faithful couple lived together in uninterrupted affection and harmony, blessed with a numerous progeny, several of whom united their father's talents with their mother's comeliness.

CHAPTER XLVII.

CONTINUATION OF THE LIFE OF LORD ELLENBOROUGH TILL HE WAS APPOINTED ATTORNEY GENERAL.

LAW had long bitterly complained that his fame was confined to the limits of the Northern Circuit. He had scarcely as yet been employed in a single cause of interest in London, whereas Erskine was already the foremost man in the Court of King's Bench, and had special retainers all over England. Our aspirant believed that if he a fair opportunity of displaying his powers, he should gain high distinction; but he dreaded that he might never lead in actions of greater interest than *trespass* for an assault, or *assumpsit* on the warranty of a horse, or *covenant* for the mismanagement of a farm, or *case* for the negligent working of a mine.

In the midst of this despondency, he found at his chambers, one evening, a general retainer for WARREN HASTINGS, ESQ., and instructions to settle the answer to the articles of impeachment, with a fee of five hundred guineas. This was a much more important occurrence to him than his appointment to be Chief Justice of England, which was the consequence of it, and followed in the natural and expected course of events. He at once perceived that his fortune was made; and in rapid succession he saw, with his mind's eye, the pleasure to be felt by his family, the mortification of his enemies, the glory that he was to acquire from entering the lists against such antagonists as Burke, Fox, and Sheridan, and the honors of his profession, which must, in due time, be showered upon him. In our judicial history no English advocate has ever had such a field for the display of eloquence as the counsel for the impeached Warren Hastings. Hale could only advise Charles I to deny the jurisdiction of the High Court of Justice; Lane, in defending the Earl of Strafford, was

only permitted to touch upon a technicality; and, till the reign of William III., in cases of high treason, it was only to argue a dry point of law which might incidentally arise that the accused had any assistance from advocacy. Since the Revolution there had been very interesting state trials, but they only involved the fate of an individual; they exhibited the struggles of retained lawyers against retained lawyers; they turned upon specific acts of criminal conduct imputed to the accused; they were over in a single day, and in nine days more they were forgotten. No one then anticipated that the impending trial of Warren Hastings was to be begun before one generation of peers and decided by another, but all knew that it involved the mode in which a distant empire had been governed; that it was to unfold the history of some of the most memorable wars and revolutions in Asia; that it was to elucidate the manners and customs of races of men who, though subjected to our dominion, we only imperfectly knew from vague rumor; that, in the course of it, appalling charges of tyranny and corruption were to be investigated; that the accusers were the Commons of England; that the managers of the impeachment were some of the greatest orators and statesmen England had ever produced, and that upon the result depended not only the existence of Mr. Pitt's administration, but what was more exciting, the fate of an individual whose actions had divided public opinion throughout the civilized world: who was considered by some a monster of oppression, cruelty, and avarice, and by others a hero, a philanthropist, and a patriot. The northern circuiteer, instead of addressing a jury of illiterate farmers at Appleby, in a small court filled with rustics, was to plead in Westminster Hall, gorgeously fitted up for the occasion, before the assembled Peers, in their ermined robes, before the representatives of the people attending as parties, and before a body of listeners comprehending all most distinguished for rank, for talent, and for beauty.

Although Law had not thought of this retainer more than of being made Archbishop of Canterbury, some of his friends had been engaged in a negotiation for securing it for him. Hastings himself was naturally desirous

that he should be defended by Erskine, who had acquired so much renown as counsel for Lord George Gordon, who had loudly declared his own personal conviction to be that the Ex-Governor General deserved well of his country. But as the impeachment had become a party question, and was warmly supported by the leaders of the party to whom Erskine belonged (although he was not then a member of the House of Commons), he reluctantly declined an engagement in which his heart would enthusiastically have prompted the discharge of his professional duties, and by which he might have acquired even a still greater name than he has left with posterity. He declared that he would not have been sorry to measure swords with Burke, who, in the House of Commons, had on several occasions attacked him rather sharply and successfully. "In Westminster Hall," said he, "I could have smote this antagonist hip and thigh." But Erskine could not for a moment endure the idea of coming into personal conflict with Fox and Sheridan, whom he loved as friends, whom he dreaded as rivals, and with whom, on a change of government, he hoped to be associated in high office.

The bar at this time afforded little other choice. Dunning had become a Peer and sunk into insignificance; his contemporaries were either connected with Mr. Pitt's Government, or were declining from years and infirmity —and among the rising generation of lawyers, although there was some promise, no one yet had gained a position which seemed to fit him for this "great argument."

The perplexity in which Hastings and his friends found themselves being mentioned in the presence of Sir Thomas Rumbold, who had been in office under him in India, he delicately suggested the name of his brother-in-law,[1] pointing out his kinsman's qualifications in respect of legal acquirements, of eloquence, and, above all, of intrepidity—on which, considering the character of the managers for the Commons, the acquittal of the defendant might chiefly depend. This recommendation was at first supposed to procceed only from the partiality

[1] Sir Thomas Rumbold had married Joanna, Bishop Law's youngest daughter.

of relationship; but upon inquiry it appeared to be judicious. The resolution was, therefore, taken to employ Law as the leading counsel, associating with him Mr. Plomer, afterwards Vice-Chancellor and Master of the Rolls, and Mr. Dallas, afterwards Solicitor General and Chief Justice of the Common Pleas—in whom Law entirely confided, and with whom he ever cordially cooperated. He still wore a stuff gown when this retainer was given, but he was clothed in silk before the trial began.

He prepared himself for the task he had undertaken with exemplary diligence and assiduity. Carrying along with him masses of despatches, examinations, and reports, which might have loaded many camels, he retreated to a cottage near the lake of Windermere, and there spent a long vacation, more laborious than the busiest term he had ever known in London. Although possessing copiousness of extempore declamation, he was fond of previously putting down in writing what he proposed to say in public on any important occasion, and there are now lying before me scraps of paper on which he had written, during this autumn, apostrophes to the Lords respecting the Rohilla war, the cruelties of Debi Sing, and the alleged spoliation of the Begums.

On the 19th of February, 1788, Mr. Burke having finished a speech of four days, in which he generally opened all the charges, Mr. Fox, his brother manager, proposed that thereafter all the charges should be taken separately, and that not only the evidence and arguments should be concluded by both sides, but that the judgment should be given by the Court upon each before another was taken in hand. Now Mr. Law for the first time opened his mouth as counsel for Mr. Hastings, and strongly resisted this proposal. He distinctly saw that upon the mode of procedure depended the issue of the impeachment, for there not only was a strong prejudice against the accused, which would have rendered perilous a speedy decision upon any part of his case, but the defense really arose from a view of the whole of his conduct while Governor-General;—the difficulties in which he was placed palliating, if they did not justify, acts which, taken by themselves, appeared criminal. The

managers, feeling the advantage they must derive from having a separate trial, as it were, on each charge, strenuously argued that this was the parliamentary course according to Lord Strafford's case and other precedents—that the due weight of evidence was most truly appreciated while it was fresh in the memory—and that facility of conception, notwithstanding the vastness of the subject, might best be attained by subdividing it into parts which the mind might be capable of grasping. Law, in answering them, availed himself of the opportunity to animadvert upon the violent language used by Burke, saying that "the defendant, who was still to be presumed to be innocent till proved to be guilty, had been loaded with terms of invective and calumny in a strain which, never since the days of Sir Walter Raleigh, had been used in an English court of justice." Mr. Fox, interrupting him, said that, "vested with a great trust from the House of Commons, he could not sit and hear such a complaint, which proceeded on the principle that in proportion as the accused was deeply guilty, the accuser, in describing his crimes, was to be considered a calumniator." Law, without any retractation or apology, pursued his argument against the course proposed by the managers, insisting that while it was contrary to the mode of proceeding in the courts of common law, there was no parliamentary precedent to support it. "My Lords," said he, "in answering one charge we may be compelled to disclose to our adversary the defense which we mean to employ upon others. We conceive that the whole case should be before you ere you decide upon any part of it. On the first charge are we, for the purpose of explaining the general policy with which it is connected, to produce all the evidence specifically calculated to repel several others? On the second charge, is the whole of the exculpatory evidence to be given over again? Is this just? is it reasonable? is it expedient? Would it be proposed in any other court professing to administer the criminal law of the country?"

The Peers withdrew to their own chamber to deliberate, and on their return to Westminster Hall, the Lord Chancellor Thurlow thus addressed the managers: "Gentlemen, I have it in charge to inform you that you are to

produce all your evidence in support of the prosecution before Mr. Hastings is called upon for his defense."

During the examination of the witnesses there was a constant sparring between the counsel and the managers, and blows were interchanged with all the freedom of *nisi prius*. For example, when Sheridan was examining Mr. Middleton for the prosecution, and finding him rather adverse, addressed some harsh observations to him, Law thus interposed—"I must take the liberty of requesting that the honorable manager will not make comments on the evidence of the witness in the presence of the witness. Such a course will tend to increase the confusion of a witness who is at all confused, and affect the confidence of the most confident. I shall, therefore, hope that the honorable manager, from humanity and decorum, will be more abstemious."

The managers having entirely failed to prove one particular act of misconduct which they had imputed to Mr. Hastings, Law expressed a wish that in future they would be more cautious in avoiding calumny and slander. Burke answered, with much indignation, that "he was astonished the learned gentleman dared to apply such epithets to charges brought by the Commons of Great Britain, whether they could or could not be proved by legal evidence; it was well known that many facts could be proved to the satisfaction of every conscientious man by evidence which, though in its own nature good and convincing, would not be admitted by the technical canons of lawyers; it would be strange, indeed, that a well-founded accusation should be denominated calumnious and slanderous, because an absurd rule prevented the truth of it from being established."

Law: "My Lords, I do not mean to apply the terms *calumny* and *slander* to any proceeding of the House of Commons; but I have the authority of that House for declaring that the honorable member has, at your Lordships' bar, used calumnious and slanderous expressions not authorized by them."

Fox: "My Lords, it is highly irregular and highly indecent in an advocate to allude to what has taken place within the walls of the House of Commons. The learned counsel has done worse, he has misrepresented

that to which he presumed to allude. We have offered in evidence the very documents upon the authority of which the Commons preferred the charge now said to be calumnious and slanderous."

Law: "I cannot justly be accused of improperly referring to proceedings in the House of Commons, as I have only repeated in substance the account given of these proceedings by the honorable manager himself in the hearing of your Lordships—and I have, therefore, the highest authority for asserting that my client has suffered from calumny and slander." [1]

Fox: "Here is a new misrepresentation. My honorable friend has not told your Lordships that anything said by the managers at your Lordship's bar was a calumny or a slander, nor said anything which can be tortured into such a meaning. And, my Lords, we will not proceed with the trial till your Lordships have expressed your opinion of the language used by the learned gentleman. We must return to the Commons for fresh instructions."

Thurlow, C.: "The words you complain of must be taken down in writing."

They were taken down accordingly.

Law: "I acknowledge them and abide by them."

The Peers were about to withdraw for deliberation to their own chamber, when it was suggested and agreed that the Chancellor should admonish the learned counsel, "that *it was contrary to order* in the counsel to advert to anything that had happened in the House of Commons; that it was *indecent* to apply the terms *calumny* and *slander* to anything which had been said by their authority, and that such expressions must not be repeated."

The great struggle was, whether the Lords were to be governed by the rules of evidence which prevail in the courts below. These Burke treated with great contempt. On one occasion, he said:—

"The accused rests his defense on quibbles, and appears not to look for anything more honorable than an Old Bailey acquittal, where on some flaw in the indict-

[1] This refers to a resolution of the House of Commons animadverting on expressions used by Mr. Burke.

ment the prisoner is found *not guilty*, receives a severe reprimand from the Judge, and walks away with the execration of the bystanders. No rule which stands in the way of truth and justice can be binding on this high court."

Law: "In the name of my client, in the name of the people of England, I protest against such doctrine. The rules of evidence have been established because by experience they have been found calculated for the discovery of truth, and the protection of innocence. If any of them are erroneous, let them be corrected and amended, but let them be equally binding upon your Lordships and the inferior courts. Are you to dismiss every standard of right, and is a party tried at your Lordships' bar—his honor and his life being at stake—to be cast upon the *capricious*, I will not say *corrupt*, opinion entertained or professed by a majority of your Lordships? Why do you summon the Judges of the land to assist you but that you may be informed by them for your guidance what are the rules of law? Unless the rules of law are to prevail, a reference to these reverend sages would be a mockery, and you should order them forever to withdraw."

The Lords very properly held that the rules of law respecting the admissibility of evidence ought to guide them; and during the trial they twenty-three times referred questions of evidence[1] to the Judges, being

[1] I have examined the questions and answers as they appeared in the Journals of the House of Lords, but they are not instructive, or of much value. With a single exception, they were not so framed as to decide any abstract point, and merely asked whether, under the actual circumstances which occurred, specific evidence was admissible.

One response to a question put was of general application, and might have been advantageously cited in the late case of Melhuish *v.* Collier, 15 Q. B. 878

Questions put to the Judges during the trial of Warren Hastings, Esq.	*Judges' reply to the said questions, as entered on the Lords' Journals.*
Feb. 29, 1788.	April 10.
Whether, when a witness, produced and examined in a criminal proceeding by a prosecutor, disclaims all knowledge of any matter so interrogated, it be competent for such prosecutor to pursue such examination, by proposing a question	The Lord Chief Baron delivered the unanimous opinion of the Judges, that, when a witness produced and examined in a criminal proceeding by a prosecutor disclaims all knowledge of any matter so interrogated, it is not competent for such prosecu-

always governed by their advice.[1] But to the conclusion of the trial Burke bitterly complained, as often as any evidence which the Managers proposed to adduce was excluded in compliance with the opinion of the Judges. On one occasion, when evidence irregularly offered by the Managers in reply had been very properly rejected, a Peer called Burke to order for arguing against a decision of the House. Mr. Hastings's leading counsel contemptuously added, that he would not waste a moment of their Lordships' time in supporting a judgment which, being founded on a rule of law, wanted no other support. *Burke:* "I have become accustomed to such insolent observations from the learned gentlemen retained to obstruct our proceedings, who, to do them justice, are as prodigal of bold assertions as they are sparing of arguments."

When the Lords disallowed the evidence of the history of the Mahratta war, Law having merely said, "It would be an insult to their Lordships, and treachery to his client, were he to waste one minute in stating the objections to it," Burke expressed deep regret that so many foreigners were present; but (looking into a box in which sat the Turkish ambassador and his suite, he added) "let us hope that some of them do not understand the English language, as the insolent remarks we are compelled to hear from counsel would be a disgrace to a Turkish court of justice."

Law was more hurt when, at a later period of the trial, having called upon Burke to retract an assertion alleged to be unfounded, the Right Honorable Manager, putting on a look of ineffable scorn, merely said in a calm tone, "My Lords, the counsel deserves no answer." Soon

containing the particulars of an answer supposed to have been made by such witness before a Committee of the House of Commons, or in any other place, and by demanding of him whether the particulars so suggested were not the answers he had so made?

tor to pursue such examination, by proposing a question containing the particulars of an answer supposed to have been made before a Committee of the House of Commons, or in any other place, and by demanding of him whether the particulars so suggested were not the answer he had so made.

[1] The same course was subsequently followed on the impeachment of Lord Melville, and is now to be considered the established law of Parliament.

after, Law, complaining of the delay caused by the frivolous questions on evidence raised by the Managers, added, "The Right Honorable Manager to whom I chiefly allude, always goes in a circle, never in a straight line. The trial will bring discredit on all connected with it. We owe it to our *common character* to prevent unneccessary delay." "Common character!" angrily interrupted the Manager, "I can never suffer the dignity of the House of Commons to be implicated in the common character of the bar. The learned counsel may take care of his own dignity—ours is in no danger except from his sympathy."

But it was by the rejection of evidence of the alleged cruelties of Raja Debi Sing that Burke was driven almost to madness. His recital of these in his opening speech had produced the most tremendous effect, curdling the blood of the stoutest men, and making the ladies shriek aloud and faint away.[1] A witness being called to prove these horrid charges, the counsel for Mr. Hastings objected that the evidence was inadmissible as there was no mention of such cruelties in any article of the impeachment, and it was not even now suggested that Mr. Hastings had directed them, or in any way sanctioned or approved of them. The Lords, after consulting the judges, determined that the evidence could not be received.

Mr. Burke: "I must submit to your Lordships' decision, but I must say at the same time that I have heard it with the deepest concern; for if ever there was a case in which the honor, the justice, and the character of a country were concerned, it is that which relates to

[1] "The treatment of the females cannot be described: dragged from the inmost recesses of their houses, which the religion of the country had made so many sanctuaries, they were exposed naked to public view; the virgins were carried to courts of justice, where they might naturally have looked for protection, but they looked for it in vain; for in the face of the ministers of justice, in the face of assembled multitudes, in the face of the sun, those tender and modest virgins were brutally violated. The only difference between their treatment and that of their mothers, was that the former were dishonored in open day, the latter in the gloomy recesses of their dungeon. Other females had the nipples of their breasts put in a cleft of bamboo and torn off. What modesty in all nations most carefully conceals, this monster revealed to view, and consumed by slow fires, and the tools of this monster, Debi Sing—horrid to tell!—carried their natural brutality so far as to introduce death into the source of generation and of life."

the disgusting cruelties and savage barbarities perpetrated by Debi Sing, under an authority derived from the British Government, upon the poor, forlorn inhabitants of Dinagepore—cruelties and barbarities so frightfully and transcendently enormous, that the bare mention of them has filled with horror every class of the inhabitants of this country. The impression which even my feeble representation of these cruelties and barbarities in this place produced upon the hearts and feelings of all who heard me is not to be removed but by the evidence that shall prove the whole a fabrication. The most dignified ladies of England swooned at the bare recital of these atrocities, and is no evidence now to be received to prove that my forbearing statement fell far short of the appalling reality?"

Law: "It is not to be borne that the Right Honorable Manager shall thus proceed to argue in reprobation of their Lordships' judgments."

Burke: "Nothing can be farther from my intention than to reprobate any decision coming from a Court for which I entertain the highest respect. But I am not a little surprised to find that the learned counsel should stand forth the champion of your Lordships' honor. I should have thought that your Lordships were the best guardians of your own honor. It never could be the intention of the Commons to sully the honor of the House of Peers. As their *co-ordinate* estate in the legislature the Commons are perhaps not less interested than your Lordships in the preservation of the honor of this noble House; and therefore we never could think of arguing in *reprobation* of any of its decisions. But I may venture to suggest that the question which you have put to the Judges is not framed in the manner to determine whether what the Commons propose is reasonable or unreasonable. If the Commons had been suffered to draw up their question themselves, they would have worded it in a very different manner, and a very different decision might have been given by your Lordships. It is true that the cruelties of Debi Sing are not expressly charged in the Article to have been committed by the authority of Mr. Hastings; but the Article charges Mr. Hastings with having established a system which he

knew *would* be, and in point of fact *had* actually been attended with cruelty and oppression. The Article does not state by whom the acts of cruelty have been commited, but it states cruelty in general, and of such cruelty so charged the Managers have a right to give evidence. The character of the nation will suffer, the honor of your Lordships will be affected, if when the Commons of England are ready to prove the perpetration of barbarities which have disgraced the British name, and call for vengeance on the guilty heads of those who have been in any degree instrumental in them, the inquiry is to be stopped by a miserable technicality. Suffer me to go into proof of those unparalleled barbarities, and if I do not establish them to the full conviction of this House and of all mankind, if I do not prove their immediate and direct relation to and connection with the system established by Mr. Hastings, then let me be branded as the boldest calumniator that ever dared to fix upon unspotted innocence the imputation of guilt. My Lords, I have done. My endeavor has been to rescue the character and justice of my country from obloquy. If those who have formerly provoked inquiry—if those who have said that the horrid barbarities which I detailed had no existence but that which they derived from the malicious fertility of my imagination—if those who have said that I was bound to make good what I had charged, and that I should deserve the most opprobrious names if I did not afford Mr. Hastings an opportunity of doing away the impression made by the picture of the savage cruelties of Debi Sing—if these same persons who so loudly called for inquiry now call upon your Lordships to reject the proofs which they before challenged me to bring, the fault is not mine. Upon the heads of others, therefore, and not upon those of the Commons of Great Britain, let the charge fall that the justice of the country is not to have its victim. The Commons stand ready to make good their accusation, but the defendant shrinks from the proof of his guilt."

Law [according to the original report of the trial, "with unexampled warmth, whether real or assumed"]: "My Lords, the Right Honorable Manager feels bold only because he knows the proof which he wants to give

cannot be received. He knows that from the manner in which the charge is worded your Lordships *cannot* if you *would* admit the proof without violating the clearest rules and principles of criminal procedure. But let the Commons put the details of those shocking cruelties into the shape of a charge which my client can meet, and then we will be ready to hear every proof that can be adduced. And if, when they have done that, the much-injured gentleman I am now trying to shield from calumny does not falsify every act of cruelty that the Honorable Managers shall attempt to prove upon him, MAY THE HAND OF THIS HOUSE AND THE HAND OF GOD LIGHT UPON HIM."[1]

This imprecation on the head of the client was deemed more cautious than magnanimous, and it was thus criticised by Fox in summing up the evidence of this Article :—

"The counsel of the defendant have invoked the judgment of your Lordships and the vengeance of Almighty God, not on their own heads, but on the head of their client, if the enormities of Debi Sing, as stated by my Right Honorable Friend, shall be proved and brought home to him. I know not how the defendant may relish his part in this imprecation; but in answer to it, if the time should come when we are fairly permitted to enter upon the proof of those enormities, I would in my turn invoke the most rigorous justice of the Peers and the full vengeance of Almighty God, not on the head of my Right Honorable Friend, but on my own, if I do not prove those enormities and fix them upon the defendant to the full extent charged by my Right Honorable Friend; and this I pledge myself to do under an imprecation upon myself as solemn as the learned gentleman has invoked upon his client."

These imprecations can only be considered rhetorical artifices; both sides were well aware that the contingency on which they were to dare the lightning of Heaven could never arrive, for the Articles of Impeachment, as

[1] The reporter, who seems to have have had a spite against Mr. Law, adds, "After this ejaculation, delivered in a tone of voice not unlike that of the theatric hero, when he exclaims 'Richard is hoarse with calling thee to battle!' the scene closed."—'History of the Trial of Warren Hastings, Esq.,' published by Debrett, Part III., p. 54-56.

framed, clearly did not admit the proof, and a fresh Article could not then have been introduced. In truth, the cruelties of Debi Sing had been much exaggerated, and Mr. Hastings, instead of instigating, had put a stop to them. His counsel must have deliberated long before they resolved to object to the admissibility of the evidence, and they were probably actuated by a dread of the prejudice it might create before it could be refuted.

Law turned to good account the frivolity and vanity of Michael Angelo Taylor, a briefless barrister, who, although the butt of the Northern Circuit, had contrived to get himself appointed a Manager. An important point coming on for argument, Law observed—"It is really a pity to waste time in discussing such a point which must be clear to all lawyers; this is no point of political expediency, it is a mere point of law, and my honorable and learned Friend there (pointing to Michael Angelo), from his accurate knowledge of the law, which he had practiced with so much success, can confirm fully what I say." Michael puffed, and swelled, and nodded his head—when Burke ran up to him quite furious, and, shaking him, said, "You little rogue, what do you mean by assenting to this?"

Law was most afraid of Sheridan, but once ventured to try to ridicule a figurative observation of his that "the treasures in the Zenana of the Begum were an offering laid by the hand of piety on the altar of a saint," by asking "how the lady was to be considered a saint, and how the camels when they bore the treasure were to be laid upon the altar?" *Sheridan*—"This is the first time in my life that I ever heard of special pleading on a metaphor, or a bill of indictment against a trope; but such is the turn of the learned gentleman's mind that when he attempts to be humorous no jest can be found, and when serious no fact is visible."

Considering that the Managers were assisted by the legal acumen and experience of Dr. Lawrence, Mr. Mansfield, and Mr. Pigott, it is wonderful to see what questions they put and insisted upon. For example, it being proved that Mr. Hastings had authorized the letting of certain lands to Kelleram and Cullian Sing, supposed to be cruel oppressors, they asked witness—

"What impression the letting of the lands to Kelleram and Cullian Sing made on the minds of the inhabitants of the country?" Before there was time to object, the witness blurted out, "They heard it with terror and dismay." Law insisted that this answer should be expunged, and that the question should be overruled, it not being in the competence of the witness to speak of anybody's feelings but his own. The Managers standing up strenuously for the regularity of their question and the fitness of the answer to it, the Peers adjourned from Westminster Hall to their own chamber, and, after a reference to the Judges, Lord Chancellor Thurlow announced to the Managers that the question objected to could not be regularly put, and that the answer to it must be expunged. Nearly a whole day was wasted in this foolish controversy.

On the 14th of February, 1792, and the seventy-fifth day of the trial, Law thus began to open the defense:—

"Your Lordships are now entering on the fifth year of a trial, to which the history of this or any other country furnishes nothing like a parallel; and it at length becomes my duty to occupy somewhat longer the harassed and nearly exhausted attention of your Lordships, and to exercise reluctantly the expiring patience of my client. Mr. Hastings, by the bounteous permission of that Providence which disposes of all things, with a constitution weakened by great and incessant exertions in the service of his country and impaired by the influence of an unwholesome climate—suffering from year to year the wounds which most pierce a manly and noble mind—the passive listener to calumny and insult—thirsting with an honorable ardor for the public approbation which illustrious talents and services ever merit—while malignity and prejudice are combining to degrade him and blacken his fair reputation in the eyes of his country—subdued by the painful progress of a trial protracted to a length unexperienced before by any British subject, and unprecedented in the annals of any other country—under all these accumulated hardships Mr. Hastings is alive this day, and kneeling at your Lordships' bar to implore the protection, as he is sure of the

justice, of this august tribunal. To a case pampered—I had almost said corrupted—by luscious delicacies, the advocates of my client can only bring plain facts and sound arguments; but we can show that eloquence has been substituted for proofs, and acrimony has supplied the place of reasoning. I could never be brought to believe that justice was the end looked for, where vengeance was the moving power."

After an exordium not wanting in dignified solemnity, although creating a wish for more purity and simplicity of diction, he proceeded to take a general view of the origin of the prosecution, of the charges into which it was divided, of the feeble manner in which they had been supported, and of the evidence by which they were to be repelled. Upon the whole, he rather disappointed expectation. Although he had shown spirit and energy while wrangling with the managers about evidence, and although still undaunted by the matchless power of intellect opposed to him, now when he had all Westminster Hall to himself and he was to proceed for hours and days without interruption or personal contest, he quailed under the quietude, combined with the strangeness and grandeur of the scene. He by no means satisfied the lively Miss Burney, then attached to the Royal household, who were all, as well as the King and Queen, devoted enemies to the impeachment, and thought no praise sufficiently warm which could be bestowed upon the accused. This is her disparaging language in her Diary: —

"To hear the attack the people came in crowds; to hear the defense they scarcely came in *tete-à-tete*. Mr. Law was terrified exceedingly, and his timidity induced him so frequently to beg quarter from his antagonists, both for any blunders and any deficiencies, that I felt angry even with modest egotism. We (Windham and I) spoke of Mr. Law, and I expressed some dissatisfaction that such attackers should not have had able and more equal opponents. 'But do you not think that Mr. Law spoke well,' cried Windham—'clear, forcible?' 'Not forcible,' cried I—'I would not say *not clear*.' 'He was frightened,' said Windham; 'he might not do himself justice. I have heard him elsewhere, and been very well

satisfied with him; but he looked pale and alarmed, and his voice trembled.'"

However, she adds—

"In his second oration Mr. Law was far more animated and less frightened, and acquitted himself so as almost to merit as much commendation as, in my opinion, he had merited censure at the opening."

It is a curious fact that the State Trial which, of all that have taken place in England, excited the most interest, is the worst reported. We have no account of it except from a set of ignorant short-hand writers, who, although they could take down evidence with sufficient accuracy, were totally incapable of comprehending the eloquent speeches which were made on either side. Burke having observed that "virtue does not depend upon *climates* and *degrees*," he was reported to have said, "virtue does not depend upon *climaxes* and *trees*."

The only authentic specimens I can give of Mr. Law's oratory when he was addressing the Lords on the merits of the impeachment are the prœmium and the peroration of his speech on the Begum charge, which are now in my possession, written by his own hand, and which he had elaborately composed at full length, and got by heart, although he trusted to short notes for his comments upon the evidence:—

"Again, my Lords, after a further period of protracted solicitude, Mr. Hastings presents himself at your Lordships' bar, with a temper undisturbed, and a firmness unshaken, by the lingering torture of a six years' trial.

"God forbid that in the mention of this circumstance I should be understood to arraign either the justice or mercy of this tribunal. No, my Lords, all forms of justice have been well observed. My blame lights on the law, not on your office, 'which you with truth and mercy minister.' As little I advert to this circumstance as seeking on this account unduly to interest your Lordships' compassion and tenderness in his favor. No, my Lords, as he has hitherto disdained to avail himself of any covert address to these affections, so your Lordships may, I trust, be assured that he does not feel himself more disposed at this moment than at any former period

of his trial to sully the magnanimity of his past life by the baseness of its close.

"He does not even now on his own account merely condescend to lament the unfortunate peculiarity of his destiny which has marked him out as the only man since man's creation who has existed the object of a trial of such enduring continuance; for, my Lords, he has the virtue, I trust, as far as human infirmity and frailty will permit, to lose the sense of his own immediate and peculiar sufferings in the consolatory reflection which his mind presents to him—that as he is in the history of mankind the first instance of this extraordinary species of infliction, so unless he vainly deems of the effect of this instance upon the human mind, and has formed a rash and visionary estimate of the generosity and mercy of our nature, it will be the last.

"He trusts, indeed, that with reference to his own country at least, he may venture to predict, what the great Roman historian, Livy, in contrasting a new and barbarous punishment, inflicted in the infancy of the Roman empire, with the subsequent lenity and humanity of the system of the penal laws which obtained amongst his countrymen, ventured in nearly the same words to declare—'Primum ultimumque illud supplicium apud Romanos exempli parum memoris legum humanarum fuit.'[1] Dismissing, however, a topic which in the present advanced stage of this trial has become at least as material for consideration with a view to the happiness and

[1] This, it will be recollected, relates to the case of Mettius Fuffetius, who for his treatchery was sentenced to a frightful death by Tullus Hostilius. This historian in a few lines beautifully narrates the sentence, the execution, and the behavior of the lookers on:—"Tum Tullus: 'Metti Fuffeti,' inquit, 'si ipse discere posses fidem ac fœdera servare, vivo tibi ea disciplina a me adhibita esset. Nunc quoniam tuum insanabile ingenium est, at tu tuo supplicio doce humanum genus ea sancta credere, quæ a te violata sunt. Ut igitur paullo ante animum inter Fidenatem Romanamque rem ancipitem gessisti, ita jam corpus passim distrahendum dabit. EXINDE, DUABIS ADMOTIS QUADRIGIS, IN CURRUS EARUM DISTENTUM ILLIGAT METTIUM—DEINDE IN DIVERSUM ITER EQUI CONCITATI, LACERUM IN UTROQUE CURRU CORPUS, QUA INHÆSERANT VINCULIS MEMBRA, PORTANTES.'

"Avertere omnes a tanta fœditate spectaculi oculos. *Primum ultimumque illud supplicium apud Romanos exempli parum memoris lenum humanarum fuit*, in aliis gloriari licet, nulli gentium mitiores placuisse pœnas."—Lib. I. c. 28.

safety of others as his own, the defendant only requests it may for the present so far dwell in your Lordships' memory as to exempt him from the blame of impatience if, thus circumstanced, he has ventured to expect such a degree of accelerated justice as a just attention to other public demands on your Lordships' time may consistently allow.

"He cannot but consider the present moment as on some accounts peculiarly favorable to the consideration and discussion of the many important questions which present themselves for your Lordships' judgment in the course of this trial.

"In a season of recommencing difficulty and alarm we learn better how to estimate the exigence of the moment, and the merit of that moment well employed, than in the calmer season of undisturbed tranquillity.

"We know then best how to value the servant and the service. We hear with awakened attention and conciliated favor the account which vigor, activity, and zeal are required to render of their efforts to save the state—and their success in saving it. In receiving the detail which ardent and energetic service are obliged to lay before us, by a sort of inconsistent gratitude we almost wish to find some opportunities of recompense in the voluntary exercise of our own virtues—some errors which candor may conceal—some excesses which generosity may be required to palliate.

"The same motives which at such a season induce us to appreciate thus favorably, the situation, duties, and difficulties, and deserts of hazardous and faithful service, induce us also to contemplate with more lively indignation the more open attacks of undisguised hostility; with more poignant aversion and disgust the cold and reluctant requitals of cautious friendship, and with still more animated sentiments of detestation and abhorrence, the treacherous, mischievous attacks of emboldened ingratitude.

"These are sentiments which the present moment will naturally produce and quicken in every mind impregnated with a just sense of civil and political duty. Can I doubt their effect and impression here, where we are taught, and not vainly taught, to believe that eleva-

tion of mind and dignity of station are equally hereditary, and that your high court exhibits at once the last and best resort of national justice, and the purest image of national honor?

"To you, my Lords, unadmonished by the ordinary forms and sanctions by which in other tribunals the attention is attracted and the conscience bound to the solemn discharge of judicial duty, the people of England, by a generous confidence equally honorable to themselves and you, have for a long succession of ages intrusted to your own unfettered and unprompted, because unsuspected honor—have intrusted the supreme and ultimate dispensation of British justice.

"Such, then, being the tribunal, and such the season at which the defendant is required to account before it for certain acts of high public concernment done in the discharge of one of the greatest public trusts that ever for so long and in so arduous a period fell to the lot of any one man to execute, he cannot but anticipate with sanguine satisfaction that fair, full, and liberal consideration of his difficulties and of his duties, of the means by which those difficulties were overcome, and the manner in which those duties were discharged, which he is sure of receiving at your Lordships' hands.

"The great length of your Lordships' time which this trial has already occupied, and the further portion of it which it must yet necessarily consume, renders it unpardonable to waste a moment upon any subject not intimately connected with the very substance of the charges which yet remain to be discussed. I will therefore without delay address myself to the immediate and actual topics which are most intimately connected with the charge now before you, which is contained in the Second Article of Impeachment, and respects principally the supposed injuries of the mother and grandmother of the Nabob of Oude—ladies usually distinguished by the name of the BEGUMS."

A speech of many hours he concluded with this PERORATION:—

"I have now at a greater length than I could have wished gone through the vastness of evidence which the managers have thought fit to adduce, and have discussed

many of the arguments which they have thought fit to offer in support of this charge, and have brought more immediately before your Lordships' views such parts of that evidence as completely repel the conclusions the managers have attempted to infer from an unfair selection and artificial collation of other parts of that same evidence. I have also generally opened to your Lordships the heads of such further evidence as we shall on our part, in further refutation of the criminal charges contained in this Article, submit to your Lordships' consideration, in order to establish beyond the reach of doubt that Mr. Hastings, in all the transactions now in question, behaved with a strict regard to every obligation of public and private duty, and effectually consulted and promoted the real and substantial interests of the country, and the honor and credit of the British name and character. Stripping this Article, therefore, of all the extraneous matter with which it has been very artfully and unfairly loaded, and reducing it to the few and simple points of which, in a fair legal view of the subject, it naturally consists—the questions will be only those which in the introduction to my address to your Lordships on this charge I ventured to state, namely, whether the Begums, by their conduct during the disturbances occasioned by the rebellion, had manifested such a degree of disaffection and hostility towards the British interests and safety, as warranted the subtraction of the guarantee which had been theretofore voluntarily and gratuitously interposed for their protection; and next, whether after that guarantee was withdrawn the Nabob was not authorized, upon every principle of public and private justice, to reclaim its rights, and we to assert our own.

"If there be those who think Mr. Hastings ought to have pursued a formal detailed judicial inquiry on the subject of the notorious misconduct of the Begums, before he adopted any measures of prevention or punishment in respect of them;—that he should have withheld his belief from the many eye and ear witnesses of the mischief they were hourly producing and contriving against us;—I say to those who think that the unquestionable and then unquestioned notoriety of a whole country—corroborated by the positive testimony of *all*

the officers then in command in that country, speaking to facts within their own observation and knowledge, is not a ground for immediate political conduct—to persons thus thinking, I am furnished with little argument to offer. I have no record of the Begums' conviction engrossed on parchment to lay before you—I have only that quantity of evidence which ought to carry conviction home to every human breast accessible to truth and reason.

"God forbid that I should for a moment draw in question the solemn obligation of public treaties. I am contending for their most faithful, honorable, and exact performance. We had pledged our word to grant the most valuable and humane protection—we asked as a recompense only the common offices of friendship and the mere returns of ordinary gratitude. How were they rendered? When the Palace of Shewalla and the streets of Ramnagur were yet reeking with the blood of our slaughtered countrymen;—when that benefactor and friend, to whose protection, as the Begum herself asserts, her dying lord, Suja Dowla, had bequeathed her, had scarce rescued himself and his attendants from the midnight massacre prepared for him at Benares; when he was pent up with a petty garrison in the feeble fortress of Chunargur expecting the hourly assault of an elated and numerous enemy; when his fate hung by a single thread, and the hour of his extinction and that of the British name and nation in India would, according to all probable estimate, have been the same; in that hour of perilous expectation he cast many an anxious northward look to see his allies of Oude bringing up their powers, and hoped that the long-protected and much-favored house of Suja Dowla would have now repaid with voluntary gratitude the unclaimed arrears of generous kindness. As far as concerned the son of that Prince, and who by no fault of Mr. Hastings had least benefited by British interposition, he was not disappointed. That Prince who had been in the commencement of his reign robbed of his stipulated rights under the treaties of Allahabad and Benares, and had been unjustly manacled and fettered by that of Fryzabad, which restrained him from his due resort to national treasure for the necessary

purposes of national defense and the just discharge of national incumbrances, found an additional motive for his fidelity in the accumulated honorable distresses and dangers of his allies. From the mother and grandmother of that Prince, enriched by his extorted spoils, and bound as they were by every public as well as private tie of gratitude and honor, Mr. Hastings looked, indeed, for a substantial succor; but he looked in vain. It was not, however, as passive and unconcerned spectators that they regarded this anxious and busy scene of gathering troubles. No; to the remotest limits of their son's dominions their inveterate hate and detestation of the British race was displayed in every shape and form which malice could invent and treachery assume. In the immediate seats of their own protected wealth and power, at the reverenced threshold of their own greatness, in sight of their nearest servant who best knew their genuine wishes, and was by that knowledge best prepared to execute them—the British commander of a large force, marching to sustain the common interests of Great Britain and its allies, is repelled by the menace of actual hostility from the sanctuary to which he had fled in assured expectation of safety. At the same period another British commander, abandoning his camp to the superior force of a rebellious chief, linked in mischievous confederacy with the Begums, hears amidst the groans of his own murdered followers the gratulation of his enemies' success and his own defeat proclaimed in discharges of cannon from the perfidious walls of Fryzabad. And during all this dismay and discomfiture of our forces in the neighborhood of their residence, the eunuchs, the slaves of their palace, under the very eye of our own insulted officers, array and equip a numerous and well-appointed force to brave us in the field.

"If these acts do indeed consist with good faith, or are such light infractions of it as merit no considerable degree of public animadversion, then I resign Mr. Hastings to the unqualified censure of mankind and the overwhelming condemnation of your Lordships. But if to have connived at another's treachery at such a crisis would have been effectually to prove and proclaim

his own; if to have continued undiminished to the Begum the enormous fruits of her own original extortion and fraud, applied, as they recently had been, to the meditated and half-achieved purpose of our undoing, would have been an act of political insanity in respect to our own safety, and of no less injustice to our friend and ally, the proprietor of these treasures; then was Mr. Hastings not warranted only, but required and without alternative or choice compelled, to apply that degree of lenient, sober, and salutary chastisement, which was, in fact, administered on this occasion. To have endured with impunity these public acts of hostile aggression would have been to expose our tame, irrational forbearance to the mockery and scorn of all the Asiatic world. Equally removed from the dangerous extremes of unrelenting severity and unlimited concession, he had the good fortune to preserve in every part of India a dread of our power, a respect for our justice, and an admiration of our mercy. These are the three great links by which the vast chain of civil and political obedience is riveted and held together in every combination of human society. By the due exertion and display of such qualities as these, one faithful servant was enabled to give strength, activity, stability, and permanence, and at last to communicate the blessings of peace and repose to the convulsed members of our Eastern empire. This age has seen one memorable and much-lamented sacrifice to the extreme and excessive indulgence of the amiable virtues of gentleness and mercy.[1] The safety of our country, the order and security of social life, the happiness of the whole human race, require that political authority should be sustained by a firm, regular, and discriminate application of rewards and punishments."

Mr. Law was supposed to do his duty in a manly and effective manner; but Dallas was more polished, and Plomer more impressive. The leading counsel gained renown in his squabbles with Burke about evidence, rather than when he had such an opportunity of making a great oration as Cicero might have envied.

In the early stages of the trial his labor and his anx-

[1] Alluding, I presume, to the fate of Louis XVI.

iety were dreadful, and he often expressed sincere regret that he had been concerned in it; but when he had become familiar with the subject, and public opinion, with which the Peers evidently sympathized, turned in favor of his client, he could enjoy the *éclat* conferred upon him from pleading before such a tribunal, for such a client, against such accusers.

At last, on the 23d of April, 1795, being the one hundred and forty-fifth day of the trial, and in the tenth year from the commencement of the crimination, he had the satisfaction to hear his client acquitted by a large majority of Peers; and he himself was warmly congratulated by his friends upon the happy event. It was expected that Burke would then have shaken hands with him; but still in Burke's sight Debi Sing could hardly have been more odious.

Law had long the credit of making the celebrated epigram upon the leader of the impeachment—

> "Oft have we wonder'd that on Irish ground.
> No poisonous reptile has e'er yet been found;
> Reveal'd the secret stands of Nature's work—
> She saved her venom to produce her Burke."

But it was composed by Dallas, as I was told, spontaneously, by Dallas himself, when he was Chief Justice of the Common Pleas. A most rankling hatred continued to subsist between Burke and all Mr. Hastings's counsel. He regarded them as venal wretches, who were accomplices in murder after the fact; and they, in return, believed the accuser to have relentlessly attempted to bring down punishment upon innocence that he might gratify his malignity and vanity. Yet they had never transgressed the strict line of their duty as advocates; and he always sincerely believed that he was vindicating the wrongs of millions of our fellow-subjects in Asia. The three advocates considered their defense of Mr. Hastings as the most brilliant and creditable part of their existence; and the accuser, undervaluing his writings against the French Revolution, which he thought only ephemeral pamphlets, exhorted Dr. Laurence, with his dying breath, to collect and publish an authentic report of the trial, saying, "By this you will erect a cenotaph most grateful to my shade, and will clear my memory

from that load which the East India Company, King, Lords, and Commons, and in a manner the whole British nation (God forgive them), have been pleased to lay as a monument on my ashes."

Law's fees, considerably exceeding £3,000, were a poor pecuniary compensation to him for his exertions and his sacrifices in this great cause; but he was amply rewarded by his improved position in his profession. When his trial began he had little more than provincial practice, and when it ended he was next to Erskine—with a small distance between them. Independently of the real talent which he displayed, the very notoriety which he gained as leading counsel for Mr. Hastings was enough to make his fortune. Attorneys and attorneys' clerks were delighted to find themselves conversing at his chambers in the evening with the man upon whom all eyes had been turned in the morning in Westminster Hall—a pleasure which they could secure to themselves by a brief and a consultation. From the oratorical school in which he was exercised while representing Warren Hastings, Law actually improved considerably in his style of doing business; and by the authority he acquired he was better able to cope with Lord Kenyon, who bore a strong dislike to him, and was ever pleased with an opportunitity to put him down. This narrow-minded and ill-educated, though learned and conscientious, Chief Justice, had no respect for Law's classical acquirements, and had been deeply offended by the quick-eared Carthusian laughing at his inapt quotations and false quantities. Erskine, who had much more tact and desire to conciliate, was the Chief Justice's special favorite, and was supposed to have his "ear" or "the length of his foot." Law, having several times, with no effect, hinted at this partiality—after he had gained much applause by his speech on the Begum charge, openly denounced the injustice by which he suffered. In the course of a trial at Guildhall he had been several times interrupted by the Chief Justice while opening the plaintiff's case, whereas Erskine's address for the defendant was accompanied by smiles and nods from his Lordship, which encouraged the advocate, contrary to his usual habit, to conclude with some expressions of

menace and bravado. Law, having replied to these with great spirit and effect, thus concluded:

"Perhaps, gentlemen, I may without arrogance assume that I have successfully disposed of the observations of my learned friend, and that the strong case I made for my client remains unimpeached. Still my experience in this Court renders me fearful of the result. I dread a power which I am not at liberty to combat. When I have finished, the summing up is to follow."

Looking at Erskine he exclaimed,

> ——" Non me tua fervida terrent
> Dicta ferox—"

He then made a bow to the Chief Justice, and as he sat down he added in a low, solemn tone,

> ——" Di me terrent et JUPITER HOSTIS."

Lord Kenyon, thinking that the quotation must be apologetical and complimentary, bowed again and summed up impartially. When it was explained to him, his resentment was very bitter, and to his dying day he hated Law. But henceforth he stood in awe of him, and treated him more courteously.

At the breaking out of the French Revolution, Law joined the very respectable body of alarmist Whigs who went over to the Government, he being actuated, I believe, like most of them, by a not unreasonable dread of democratical ascendency, rather than by any longing for official advancement. However, he refused offers of a seat in Parliament—even after the impeachment was determined. In society he acted the part of a strong Pittite, and he was accused of displaying "renegade rancor" against his former political associates:—but his friends asserted that "he had only been a Whig as Paley, his tutor, had been a Whig, and that he uniformly was attached to the principles of freedom, although he was always, for the good of the people, a friend to strong government."

His position on the circuit fully entitled him to the appointment which he now obtained of Attorney General of the County Palatine of Lancaster, and he was fairly destined to higher advancement, when Scott and Mitford,

the present law officers of the Crown, should be elevated to the bench.

Meanwhile he conducted some State prosecutions in the provinces. Mr. Walker, a respectable merchant at Manchester, and several others, being indicted on the false testimony of an informer for a conspiracy to overturn the Constitution, and to assist the French to invade England, Law conducted the case for the Crown, and Erskine came *special* against him. At first the defendants seemed in great jeopardy, and Mr. Attorney of the County Palatine, believing the witness to be sincere, eagerly pressed for a conviction. A point arising about the admissibility of a printed paper, Erskine theatrically exclaimed, "Good God, where am I?"

Law (with affected composure): "In a British court of justice."

Erskine (indignantly): "How are my clients to be exculpated?"

Law (in a still quieter tone): "By legal evidence."

Erskine (much excited): "I stand before the people of England for justice."

Law (bursting out furiously): "I am equally before the people of England for the protection of the people of England; if you rise in this tone I can speak as loudly and as emphatically; there is nothing which has betrayed improper passion on my part; but no tone or manner shall put me down."

In the course of the trial the rivals were reconciled, and tried which could flatter best.

Law: "I know what I have to fear upon this occasion. I know the energy and the eloquence of my learned friend. I have long felt and admired the powerful effect of his various talents. I know the ingenious sophistry by which he can mislead, and the fascination of that look, by which he can subdue the minds of those whom he addresses. I know what he can do to-day by remembering what he has done upon many other occasions before."

Erskine: "Since I have entered the profession, I have met with no antagonist more formidable than my learned friend to whom I am now opposed. While admiring his candor and courtesy, I have had reason to know

the sharpness of his weapons and the dexterity of his stroke.

> ——'Stetimus tela aspera contra
> Contulimusque manus; experto credite quantus
> In clypeum assurgat, quo turbine torqueat hastam.'"[1]

An acquittal took place: the guns which were to assist the French being proved to have been brought to fire a *feu-de-joie* on the King's recovery. The informer, being convicted of perjury, was sentenced, at the same assizes, to stand in the pillory, and to be imprisoned two years in Lancaster Castle.[2]

Law was more successful in prosecuting Mr. Redhead Yorke for sedition, but this prosecution reflects much discredit upon the times in which it took place. The defendant, at a public meeting, had made a speech, which he printed and circulated as a pamphlet, in favor of a reform in Parliament: animadverting with severity upon some of the proceedings of the House of Commons, and accusing that assembly of corruption. He was, therefore, indicted for a conspiracy "to traduce and vilify the Commons' House of Parliament, to excite disaffection towards the King and his government, and to stir up riots, tumults, and commotions in the realm.' Mr. Law, in opening the case to the jury, laid down that "whatever speech or writing had a tendency to lessen the respect of the people for the House of Commons was unlawful." He said, "In no country can a government subsist which is held in contempt. Does not every government under the sun take means, and must it not take means against such degrading insults? Why, in God's name, is the united dignity of the empire to be insulted in this way? What is the practical consequence of ridicule thrown on such a body? From the moment that men cease to respect, they cease to obey, and riot and tumult may be expected in every part of the kingdom."

The defendant delivered a very able and temperate address to the jury; but he was repeatedly interrupted by the Judge when making observations which we should

[1] This quotation was afterwards applied by Mr. Canning to Lord Brougham.

[2] 23 St. Tr. 1055. LIVES OF CHANCELLORS, vi. 465.

think quite unexceptionable. A specimen may be both amusing and instructive:—

Defendant: "You will recollect that the House of Commons, in one day, in the midst of a paroxysm of delusion, threw the liberties of the people at the foot of the throne; I mean by the suspension of the Habeas Corpus Act. You will recollect that, in consequence of that suspension, every man was unsafe in his person—every man had reason to tremble for his life."

Rooke, J.: "I must check you, Mr. Yorke, when you talk of the House of Commons throwing the liberties of the people at the foot of the throne."

Defendant: "If your Lordship had permitted me, I should have explained that idea."

Rooke, J.: "I sit here upon my oath, and I cannot suffer any sentiment to pass that is at all disgraceful to that House."

Defendant: "It was far from my intention. I was only stating that the *Habeas Corpus Act* was suspended, and was about to state the reason why. I consider the *Habeas Corpus Act* and the Trial by Jury as the firmest bulwarks of our liberties; certain it is that the legislature thought the country in danger—that it was necessary to strengthen the arm of government, and in some degree to weaken the liberties of the people. May not I, with your Lordship's permission, state what my perception is of the constitution, in order that I may point out where the necessity for reform lies?"

Rooke, J.: "Annual parliaments and universal suffrage are the general principle upon which the witnesses say you have gone. Now, annual parliaments and universal suffrage are contrary to the established constitution of the country."

Defendant: "Sir Henry Spelman, treating of the Anglo-Saxon government, says that the *Michel-Gemote* met *in annuo parliamento.* Here is the Parliamentary Roll of 5 Ed. II."

Rooke, J.: "The Crown called a parliament annually, without an annual election. Septennial parliaments are the law of the land, and I cannot hear you go on in that way."

Defendant: "Septennial parliaments are unquestion-

ably an actual law of the land; but what I mean to state is, whether, according to the principles of the Revolution, they ought to be so. Mav I not state it as my opinion?"

Rooke, J.: "No."

Defendant; "Mr. Pitt himself and most of the great men have held the same language."

Rooke, J.: "Not in a court of justice. I am bound by my oath to abide by the law, and I cannot suffer anybody to derogate from it." [1]

After a most intolerant reply from Mr. Law, and a summing up, in which the judge restated his doctrine with respect to finding fault with the existing constitution of the House of Commons, the defendant was found guilty, and sentenced to two years' imprisonment in the Dorchester jail. What must have been the state of public feeling when such proceedings could take place without any censure in parliament, and with very little scandal out of it? The reign of terror having ceased, and Englishmen being again reconciled to liberty, Mr. Redhead Yorke was much honored for his exertions in the cause of parliamentary reform, and he was called to the bar by the Benchers of the Middle Temple.[2]

Law gained very great credit with all sensible men from his conflict with Lord Kenyon about *forestalling* and *regrating*. He had studied successfully the principles of political economy, and he admirably exposed the absurd doctrine that the magistrate can beneficially interfere in the commerce of provisions; but he had the mortification to see his client sentenced to fine and imprisonment for the imaginary crime of buying with a view to raise the price of the commodity.[3]

I now come to what is considered the most brilliant passage of the life of the future Lord Ellenborough—his triumph over Sheridan at the trial of Lord Thanet and Mr. Fergusson for assisting in the attempt to rescue Arthur O'Connor. This trial excited intense interest. The government was most eager for a conviction, while the honor of the Whig party was supposed to require an ac-

[1] Rooke was a very meek man, and at that time, I dare say, most of the other judges would have held similar language.

[2] 25 St. Tr. 1003-1 54. [3] R. *v.* Waddington, 1 East, 166.

quittal. Several police officers, examined for the Crown, swore that both defendants had taken an active part in favoring O'Connor's escape in the court at Maidstone; but they were flatly contradicted by several respectable witnesses, who were corroborated by Mr. Whitbread; and if the defendants' case had been closed there, in all probability they would have got off with flying colors. To make security doubly sure, Mr. Sheridan was called, and being examined by Erskine, he gave his evidence in chief in a very collected and clear manner; but being cross-examined by Law, who had fostered a spite against him ever since their quarrel during Hastings's trial, he lost his head entirely and brought about a verdict of GUILTY. To convey a proper notion of this encounter, the cross-examination must be given at length:

L.: "I will ask you whether you do or do not believe that Lord Thanet and Mr. Fergusson meant to favor O'Connor's escape?"

S.: "Am I to give an answer to a question which amounts only to opinion?"

L.: "I ask as an inference from their conduct, as it fell under your observation, whether you think Lord Thanet or Mr. Fergusson meant to favor Mr. O'Connor's escape—upon your solemn oath."

S.: "Upon my solemn oath I saw them do nothing that could be at all auxiliary to an escape."

L.: "That is not an answer to my question."

S.: "I do not wish to be understood to blink any question, and if I had been standing there and been asked whether I should have pushed or stood aside, I should have had no objection to answer that question."

L.: "My question is, whether, from what you saw of the conduct of Lord Thanet and Mr. Fergusson, they did not mean to favor the escape of O'Connor, upon your solemn oath?"

S.: "The learned counsel need not remind me that I am upon my oath; I know as well as the learned counsel does that I am upon my oath: and I will say that I saw nothing auxiliary to that escape."

L.: "After what has passed, I am warranted in reminding the honorable gentleman that he is upon his oath. My question is, whether, from the conduct of

Lord Thanet and Mr. Fergusson, or either of them, as it fell under your observation, you believe that either of them meant to favor O'Connor's escape?"

S.: "I desire to know how far I am obliged to answer that question. I certainly will answer it in this way, that from what they did, being a mere observer of what passed, I should not think myself justified in saying that either of them did. Am I to say whether I think they would have been glad if he had escaped? That is what you are pressing me for."

L.: "No man can misunderstand me; I ask whether, from the conduct of Lord Thanet and Mr. Fergusson, or either of them, as it fell under your observation, you believe, upon your oath, that they meant to favor the escape of O'Connor?"

S.: "I repeat it again, that from what either of them did, I should have no right to conclude that they were persons assisting the escape of O'Connor."

L.: "I ask you again, upon your oath, whether you believe, from the conduct of Lord Thanet or Mr. Fergusson, that they did not mean to favor the escape of O'Connor?"

S.: "I have answered that question already."

Lord Kenyon: "If you do not answer it, to be sure we must draw the natural inference."

S.: "I have no doubt that they *wished* he might escape; but from anything I saw them do, I have no right to conclude that they did."

L.: "I will have an answer; I ask you again, whether, from their conduct as it fell under your observation, you do not believe they meant to favor the escape of O'Connor?"

S.: "If the learned gentleman thinks he can entrap me, he will find himself mistaken."

Erskine: "It is hardly a legal question."

Lord Kenyon: "I think it is not an illegal question."[1]

L.: "I will repeat the question, whether, from their conduct, as it fell under your observation, you do not

[1] I think it is clearly an illegal question, and I am astonished that Erskine so quietly objected to it. I should at once overrule such a question; for it does not inquire into a fact, or any opinion upon matter of science, but asks the witness, instead of the jury, the inference as to the guilt or innocence of the accused to be drawn from the evidence.

believe that they meant to favor the escape of O'Connor?"

S.: "My belief is, that they *wished* him to escape; but from anything I saw of their conduct on that occasion, I am not justified in saying so."

Erskine in vain tried to remedy the mischief by re-examination:—

"You were asked by Mr. Law whether you believed that the defendants wished or meant to favor the escape of Mr. O Connor; I ask you, *after what you have sworn, whether you believe these gentlemen did any act to rescue Mr. O'Connor?*"

S.: "Certainly not."

E.: "You have stated that you saw no one act done or committed by either of the defendants indicative of an intention to aid in O'Connor's escape?"

S.: "Certainly."

E.: 'I ask you, then, whether you believe that they did take any part in rescuing Mr. O'Connor?"

S.: "Certainly not."

However, the jury could never get over the WISH that O'Connor should escape;[1] so both defendants were convicted, and although their right arms were not cut off—the specific punishment to which it was said they were liable—they were sentenced to heavy fines and long imment.[2]

There had hitherto been a certain mistrust of Law, on account of his early Whiggery; but he was now hailed as a sincere Tory, and his promotion was certain.

For several more years, however, no vacancy occurred, and his highest distinction was being leader of the Northern Circuit. There, indeed, he reigned supreme, without any brother being near the throne. He had completely supplanted Sergeant Cockell, who, notwithstanding a most curious nescience of law, had for some time been profanely called "the Almighty of the North."

[1] Sheridan used afterwards to pretend that he had the best of it, and that he put Law down effectually. Among other questions and answers not to be fonnd in the full and accurate report of the short-hand writer who was present, he used to relate—"When Law said, 'Pray, Mr. Sheridan, do answer my question, without point or epigram,' I retorted, 'You say true, Mr. Law; your questions are without point or epigram.'"

[2] 27 St. Tr. 821.

Some juniors had taken the coif without emerging from obscurity, and the only other silk gown on the circuit was worn by "Jemmy Park," whom Law could twist round his finger at any time. Scarlett, in stuff, began to show formidable powers; but as yet was hardly ever trusted with a lead. Being so decidedly the "Cock of the Circuit," it is not wonderful that Law should crow very fiercely. According to all accounts, he did become excessively arrogant, and he sometimes treated rudely both his brother barristers and others with whom he came into collision.

He was always ready, however, to give satisfaction for any supposed affront which he offered. Once he happened, at York, to be counsel for the defendant in an action on a horse-race, the conditions of which required that the riders should be "gentlemen." The defense was that the plaintiff, who had won the race, was not a "gentleman." A considerable body of evidence was adduced on both sides, and Mr. Law commented upon it most unmercifully. The jury found for the defendant that the plaintiff was "not a gentleman." The defeated party blustered much, and threatened to call the audacious advocate to account. Law, putting off his journey to Durham for a day, walked about booted and spurred before the coffee-house, the most public place in York, ready to accept an invitation into the field or to repel force by force, because personal chastisement had likewise been threatened. No message was sent, and no attempt was made to provoke a breach of the peace.

CHAPTER XLVIII.

CONTINUATION OF THE LIFE OF LORD ELLENBOROUGH TILL HE WAS APPOINTED LORD CHIEF JUSTICE.

THE great Northern Leader had reached his fifty-first year, and still the political promotion which he so earnestly desired never opened to him. Having till then, in his own language, "crawled along the ground without being able to raise himself from it," in the language of his friend Archdeacon Paley, "he suddenly rose like an æronaut."[1]

Mr. Pitt, in 1801, stepped down from the premiership, and, a new arrangement of legal offices following, Mr. Addington, the new minister, sent for Mr. Law, and offering him the Attorney Generalship, observed: "That as his ministry might be of short duration, and the sacrifice to be made considerable, comprising the lead of the Northern Circuit, to which there was no return, he would not expect an immediate answer, but hoped that in two days he might receive one?" "Sir," said Mr. Law, "when such an offer is made to me, and communicated in such terms, I should think myself disgraced if I took two days, two hours, or two minutes to deliberate upon it; I am yours, and let the storm blow from what quarter of the hemisphere it may, you shall always find me at your side."

[1] Paley had been chaplain to Law's father, the bishop, who gave him his first preferment, and there was the strictest intimacy between Law and Paley through life. The former, when Chief Justice, has been heard to say, "Although I owed much to Paley as an instructor (for he was practically my tutor at college), I was much more indebted to him for the independent tone of mind which I acquired through his conversation and example; Paley formed my character; and I consider that I owe my success in life more to my character than to any natural talents I may possess." Law corrected for Paley the proof-sheets of some of his works as they were passing through the press; and in Law's house, in Bloomsbury Square, there was an apartment which went by the name of "Paley's room," being reserved for the Archdeacon when he paid a visit to the metropolis.

When he attended in the King's closet to kiss hands and to be knighted, George III., who had been recently in a state of derangement, and was as yet only partially recovered, after bidding him "rise, Sir Edward," said to him, "Sir Edward, Sir Edward, have you ever been in parliament?" and being answered in the negative, added, "Right, Sir Edward; quite right, Sir Edward; for now, when you become my Attorney General, Sir Edward, you will not eat your own words, Sir Edward, as so many of your predecessors have been obliged to do, Sir Edward."

In those Ante-Reform-Act days the Government always—easily, and as a matter of course—provided seats in the House of Commons for the law-officers of the Crown, they paying only £500 as a contribution to the Treasury-borough fund. A considerable number of seats were under the absolute control of the minister for the time being, and others, for a consideration in money or money's worth, were placed by borough proprietors at his disposal. The difficulty of getting and keeping a seat in the House of Commons, which now so much influences the appointment to offices, was then never thought of. In consequence, the minister certainly had a more unlimited command of talent and fitness for public service. No one would now think of going back to the "nomination" system, its conveniences being greatly outweighed by its evils; but the experiment may hereafter be made of allowing certain officers of the Crown, as such, to have voice without vote in the House of Commons.

The new Attorney General, having deposited his £500 with the Secretary of the Treasury, was returned for a close borough, and on the 2nd of March, 1801, he was sworn in at the table.

He seems to have imbibed the doctrine for which I have heard the great Lord Lyndhurst strenuously contend, that no allusion ought to be made in parliament to any political opinions entertained or expressed by any individual before going into parliament. Having openly and zealously belonged to the Whigs till 1792—after changing sides, Law was eager to embrrce every opportunity of attacking or sneering at that party in their subsequent prostrate condition

He entered St. Stephen's Chapel too late in life to be a skillful debater; but as often as he spoke he commanded attention by the energy of his manner and the rotundity of his phrases (reminding the old members of Thurlow), and he gave entire satisfaction to his employers. His maiden speech was made in support of the bill for continuing martial law in Ireland, which gave courts martial jurisdiction over all offenses, with a power of life and death. He contended that "this measure had led to the extinction of rebellion in that country, and that to its operation the House owed their power of debating at that moment, for without it the whole empire would have been involved in one common ruin. The aspect of the late rebellion he conceived to be unequalled in the history of any country; never before had rebellion so aimed at the destruction of all that is venerable in political institutions or sweet in domestic life—of all the social affections which unite man to man—of all the sacred sanctions which bind man to his Maker."[1] Coercive measures for Ireland are always well relished in the House of Commons, and, on a division, eight only mustered in the minority.

Mr. Attorney next argued the necessity for suspending the Habeas Corpus Act in England, asserting that the constitution of the country would not be safe if the bill which was now moved for were not passed. He said "he would maintain that it was a most lenient measure, and particularly to those against whom it was intended. To prevent an outbreak of treason, was mercy to the traitors. Because crimes were not judicially proved, their existence must not be denied. Had it not been for subsequent events, the acquitted and sainted Arthur O'Connor, long the idol of the other side of the House, now confessing his guilt—who had been so lauded as to cause universal nausea—would have gone to his grave loaded with the unmixed praises of his compurgators."[1] The minority now amounted to forty-two.

When the Rev. John Horne Tooke was nominated as member for the borough of Camelford, the question arose whether a priest in orders was qualified to sit in the House of Commons? Mr. Attorney learnedly argued

[1] 35 Parl. Hist 1044.

[1] Ib. 1288.

for the negative, and zealously supported the bill to prevent such an occurrence in future. Mr. Horne Tooke had his revenge, and excited a laugh at the dogmatizing method of his opponent, which he pronounced to be "only fit for the pulpit, so that an exchange might advantageously be made between the Law and the Church." [1]

Sir Edward's last speech in the House of Commons was on the claim made by the Prince of Wales against the King for an account of all the revenues of the Duchy of Cornwall during his Royal Highness's minority. The ground taken by him was, that the King had a set-off for his Royal Highness's board and education, which overtopped the demand. "Can it be contended," said he, "that the Prince of Wales, after having been maintained one-and-twenty years in all the splendor becoming his elevated rank, may at last call the King to an account for all the money received for that purpose during his minority? The Duchy of Cornwall was granted by Edward III. to his son, that he himself might be relieved from the burden which had previously been thrown upon him and other Kings of maintaining their heirs at their own expense. It has been clearly shown that the money advanced to this Prince of Wales during his minority exceeds all his revenues, and that the balance is against him. The elegant accomplishments and splendid endowments of this '*Hope of England*' prove that he has experienced the highest degree of parental care, tenderness, and liberality." [2] This controversy, though often renewed, was never brought to a final decision; but the arguments seem conclusively to prove that the revenues of the Duchy of Cornwall belong to the Prince of Wales during his minority, and that he is entitled to an account of them on his coming of age.

The negotiations for a peace with Napoleon as First Consul of the French Republic were now going on, and parliamentary strife was allayed till the result should be known, all parties agreeing that in the mean time no attempt should be made to subvert the government of Mr. Addington. Before this event Sir Edward Law was transferred to another sphere of action.

[1] 25 Parl. Deb. 1335—1398. [2] 36 Parl. Hist. 433.

During the short period of his Attorney Generalship no prosecution for treason or any political offense arose, but in his official character he did conduct one of the most memorable prosecutions for murder recorded in our judicial annals. It brought great popularity to him and the Government of which he was the organ, upon the supposition that it presented a striking display of the stern impartiality of British jurisprudence; but after a calm review of the evidence I fear it will rather be considered by posterity as an instance of the triumph of vulgar prejudice over humanity and justice. The alleged crime had been committed twenty years before the trial, and, except in the case of Eugene Aram, there never had been known such an illustration of the doctrine of our law, that in criminal matters no lapse of time furnishes any defense, while all civil actions are barred by short periods of prescription; upon the supposition that the evidence may have perished which might have proved the charge to be unfounded. JOSEPH WALL, who had served from early youth as an officer in the army, and had always been distinguished for gallantry and good conduct, was, during the American War, appointed Governor of Goree, on the coast of Africa. With a very insufficient garrison, and with very slender military supplies, he had to defend this island from the French, who planned expeditions against it from their neighboring settlement of Senegal. Governor Wall performed his duty to his country in the midst of formidable difficulties, with firmness and discretion—and the place intrusted to him was safely preserved from all perils till peace was re-established. He was then about to return home, in the expectation of thanks and promotion, but great discontents existed among the troops forming the garrison, by reason of their pay being in arrear. This grievance they imputed to the Governor, and they resolved that he should not leave the island till they were righted. Benjamin Armstrong, a sergeant, their ringleader, was brought by him irregularly before a regimental court martial, and sentenced to receive eight hundred lashes. Although this whipping was administered with much severity, he in all probability would have recovered from it if he had not immediately after

drunk a large quantity of ardent spirits; but his intemperance, together with the wounds inflicted upon him by the flagellation, and an unhealthy climate, brought on inflammation and fever, of which he died. Order was restored, and the Governor returned to England. However, representations were made to the authorities at home respecting the irregularity and alleged cruelty which had been practiced, and exaggerated accounts of the proceeding were published in the newspapers, stating among other things that the Governor had murdered Armstrong and several others by firing them from the mouths of cannon. A warrant was issued against him by the Secretary of State; he was arrested by a King's messenger, and he made his escape as they were conveying from Bath in a chaise and four. He immediately went abroad, and he continued to reside on the continent till the peace of Amiens—when, on the advice of counsel, he came to England, wrote a letter to the Secretary of State announcing his return, and surrendered himself to take his trial.

I am old enough to remember the unexampled excitement which the case produced. The newspapers were again filled with the unexampled atrocities of Governor Wall, and a universal cry for vengeance upon him was raised. Among the higher and educated classes a few individuals, who took the trouble to inquire into the facts, doubted whether he was liable to serious blame, notwithstanding the circumstance against him that he had fled from justice; but the mass of the population, and particularly the lower orders, loudly pronounced Governor Wall guilty before his trial, and clamored for his speedy execution.

The trial (if trial it may be called) did come on at the Old Bailey on the 20th of January, 1802, under a special commission, issued by the authority of 33 Hen. VIII., c. 23. The Attorney General, who appeared as public prosecutor, was conscientiously convinced of the prisoner's guilt, and, free from every bad motive, was only desirous to do his duty. He propounded the law of murder very correctly to the jury, and I cannot say that he suppressed any evidence, or put any improper question to any witness, but he showed a determined resolu-

tion to convict the prisoner. I should not like to be answerable for such a conviction.

Then a very young man, just entered at Lincoln's Inn, I was present at the trial, and, carried away by the prevalent vengeful enthusiasm, I thought that all was right; but after the lapse of half a century, having dispassionately examined the whole proceeding, I come to a very different conclusion.

I have now a lively recollection of the effect produced by the opening speech of the Attorney General, to which, as the law then stood, no answer by counsel was permitted. With professions of candor he narrated the facts in a tone of awful solemnity, so as to rouse the indignation of the jury. He particularly dwelt upon the fact, that the men employed to inflict the punishment were not the drummers of the regiment, but African negroes, and he pronounced the punishment wholly illegal, as the sentence could only have been passed by a general court-martial, assembled according to the "Articles of War." He allowed, indeed, that if there was a dangerous mutiny, all forms might be dispensed with, but insisted that the onus lay on the prisoner to make this clearly out; and, by anticipation, he sought to discredit the witnesses to be called for the defense. He dwelt with much force upon the circumstances that a dispatch written by the prisoner, soon after his return to England, to Lord Sidney, the Secretary of State, was silent as to the supposed mutiny; he palliated the resolution of the soldiers not to permit the Governor to leave the island till their arrears were paid, by observing that, "after his departure, a vast ocean would separate them from their debtor, and considering the precariousness of human life, and particularly in that unhealthy settlement, if they did not press their demands at that period, it was possible they might not be in a situation afterwards to urge it with any beneficial effect to themselves." These were the conditions on which it was said by the Attorney General the prisoner was entitled to an acquittal: "It will be incumbent on him to show the existence of crime in the alleged mutineer, the impossibility of regular trial, and the reasonable fitness of the means substituted and resorted to in the place of

trial. All these things it will be incumbent on the prisoner to prove. It may likewise be proper for him, in further exculpation of his conduct, to show how he withdrew himself from justice at the time when he was first apprehended; for it should seem that if he was an innocent man, this was above all others the convenient time to prove his innocence. It will give me great satisfaction if he is able to establish that there existed such circumstances as will make the crime with which he is charged not entitled to be denominated and considered as murder."

The witnesses for the prosecution represented that when Armstrong and his associates came up, demanding their arrears, they were unarmed, and that they returned to their quarters when ordered to do so by the Governor, so that no extraordinary measures of severity were necessary; but they admitted that the sentence had been pronounced by a drumhead court martial, which the Governor summoned, and they admitted that although where a mutiny is made the subject of inquiry by a general court martial, it is officially returned; if a mutiny is repressed at the instant, and a drumhead court martial is held, it is not returned if the punishment be short of death. No attempt was made to show that the prisoner had any spite against Armstrong, or that he was actuated by any improper motive.

When called upon for his defense, Governor Wall confined himself to a simple narrative, which, if true, showed that Armstrong had been guilty of most culpable conduct, and that after he had led back the men to their quarters he still entertained very dangerous designs.

Mrs. Lacy, the widow of the succeeding Governor, who had been second in command when the affair happened, stated on her oath that Armstrong and the seventy soldiers he led on threatened Governor Wall, and swore that if he did not satisfy their demands they would break open the stores and satisfy themselves. She was strongly corroborated by eye-witnesses respecting the dangerous character of the mutiny, and by the opinion of the other officers in the garrison, that extraordinary measures must immediately be taken to repress it. Several general officers who had known the prisoner all

his life, and other respectable witnesses, gave him a high character for good temper and humanity. But one of them being cross-examined on the subject by the Attorney General, said that "he had not heard this character of him on the island of Goree," and a witness called in reply to say that a witness examined for the prisoner ought not to be believed on his oath, said that the prisoner's witness was "reckoned a lying, shuffling fellow."

The jury, after half an hour's deliberation, returned a verdict of *Guilty*, which was received with loud acclamation, and, according to the law as it then stood, the sentence of death, which was immediately passed, was ordered to be carried into execution on the second day after the trial.

Not withstanding the general satisfaction testified, many were shocked by this proceeding, and petitions for mercy were presented to the King. The case being examined by Lord Eldon, and other members of the Government, there was a sincere desire among them to save the unfortunate gentleman, and a respite for two days was sent to give time for further deliberation—but there arose such a burst of public resentment as was never known on such an occasion in this country. Still a further respite was granted for three days more, in the hope that reason and humanity might return to the multitude. On the contrary, an open insurrection was threatened, and it was said that the common soldiers and non-commissioned officers of the three regiments of Guards, who would have been called in to quell it, had declared that they would join the rioters, and assist with their own hands in executing the sentence of law on the murderer of Sergeant Armstrong. The Government had not the courage to grant a further respite, and Governor Wall was hanged on a gibbet in front of the jail at Newgate, amidst the shouts and execrations of the most numerous mob that ever assembled in England to witness a public execution.[1]

[1] 28 St. Tr. 51–178. A writer, who highly approves of the execution of Governor Wall, says, "His inhuman cruelties had so hardened the multitude, that they hailed with exulting shouts his appearance on the scaffold, and triumphed in the knowledge that neither station, nor lapse of time, nor distance, would shield a convicted murderer from his just doom."—Townsend's Judges, vol. i. 328.

Sir Edward Law was now a good deal disturbed by the near prospect of a vacancy in the office of Chief Justice of the King's Bench. Lord Kenyon, having made a vain effort to discharge the judicial duties in the beginning of Hilary Term, had been ordered by his physician to Bath, and from the accounts of his declining health, it was well understood that he could never sit again. The peace with France being approved of in both Houses, the Catholic question having gone to sleep, the King's health being restored, and Mr. Addington's Government being stronger than any one ever expected to see it, Sir Edward Law would not have been sorry to have continued in the office of Attorney General, but he could not bear the idea of any one being put over his head, and rumors reached him that as he could not have been considered to have won a right to the office of Chief Justice, from having served only a few months as a law officer of the Crown, it was to be conferred on Erskine, who, since the peace, had been coquetting with the new Prime Minister. I happened to be sitting in the student's box in the Court of King's Bench, on the 5th of April, 1802, when a note announcing Lord Kenyon's death was put into the Attorney General's hand. I am convinced that at this time he had received no intimation respecting the manner in which the vacancy was to be filled up, for he looked troubled and embarrassed, and immediately withdrew.

He did not again appear in Court till the 12th of April, when he was sworn in and took his seat as Chief Justice.[1] Mr. Addington had the highest opinion of him, and never had hesitated about recommending him for promotion. On going home from the Court, after hearing of Lord Kenyon's death, Mr. Attorney found a letter from the Prime Minister, announcing that the King would be advised to appoint him, and expressed a confident belief that "when the royal pleasure was taken his Majesty would willingly sanction an appointment likely to be so conducive to the upright and enlightened administration of justice to his subjects." Immediately after Lord Kenyon's funeral, the King's pleasure was formally taken, with the anticipated result,

[1] 2 East, 253.

and his Majesty cordially agreed to the proposal that the new Chief Justice should be raised to the peerage.

It was first necessary that he should submit to the degree of the coif, only sergeants-at-law being qualified to preside in the King's Bench, or to be Judges of Assize. In compliment to the peace concluded by his patron with the First Consul of the French Republic, he took for the motto of his rings,

"Positis mitescunt secula bellis."

For his barony he chose from a small fishing village on the coast of Cumberland, a sounding title, to which there could be no objection, except that having very often officially to sign it, he was forced afterwards to write many millions of large characters, beyond what would have been necessary if he had been contented with a word of two syllables, without any unphonetic consonants.[1]

[1] At Ellenborough there is a small estate which had been in his mother's family since the reign of Henry II., and it was supposed that he was partly induced to take this title as a mark of respect to her memory.

CHAPTER XLIX.

CONTINUATION OF THE LIFE OF LORD ELLENBOROUGH TILL HE BECAME A CABINET MINISTER.

LORD ELLENBOROUGH'S appointment was generally approved of, and he had the felicity of being promoted without the hostility of an effete predecessor, or the grudge of a disappointed rival, or the envy of contemporaries whom he had surpassed.

His professional qualifications were superior to those of any other man at the bar. Having an excellent head for law, by his practice under the bar he was familiarly versed in all the intricacies of special pleading; although not equally well acquainted with conveyancing, he had mastered its elements, and he could *pro re nata* adequately understand and safely expatiate upon any point of the law of real property which might arise. He was particularly famous for mercantile law; and a thorough knowledge of the rules of evidence, and of the principles on which they rested, made his work easy to him at *nisi prius*. Not only had he the incorruptibility now common to all English Judges, but he was inspired by a strong passion for justice, and he could undergo any degree of labor in performing what he considered his duty. He possessed a strong voice, an energetic manner, and all physical requisites for fixing attention and making an impression upon the minds of others. I must likewise state as a great merit that he could cope with and gain an ascendency over all the counsel who addressed him, and that he never had a favorite; dealing out with much impartiality his rebuffs and his sarcasms. The defects in his judicial aptitude were a bad temper, an arrogance of nature, too great a desire to gain reputation

by despatch, and an excessive leaning to a severity of punishment.

He did not by any means disappoint the favorable anticipations of his friends, although the blemishes were discoverable which those dreaded who had more closely examined his character. The day when he took his seat in court as Chief Justice, he said privately to an old friend that "his feelings as a barrister had been so often outraged by the insults of Lord Kenyon, he should now take care that no gentleman at the bar should have occasion to complain of any indignity in his court, and that he hoped any one who thought himself ill-used would resent it." Yet before the first term was over, he unjustifiably put down a hesitating junior, and ever after he was deeply offended by any show of resistance to his authority. By good fortune he had very able *puisnes*, so that the decisions of the Court of King's Bench while he was Chief Justice are entitled to the highest respect. Grose was his coadjutor of least reputation; but this supposed weak brother, although much ridiculed,[1] when he differed from his brethren, was voted by the profession to be in the right. All the others—Lawrence, Le Blanc, Bayley, Dampier, Abbott, Holroyd—were among the best lawyers that have appeared in Westminster Hall in my time. It was a great happiness to practice before them, and I entertain a most affectionate respect for their memory.

Lord Ellenborough did not attempt to introduce any reform in the practice of his court, or in the preparation of the preliminary pleadings. The writ of Latitat was still as much venerated as the writ of Habeas Corpus, and all the arbitrary and fantastic rules respecting declarations, pleas, replications, rejoinders, surrejoinders, rebutters and surrebutters, which had arisen from accident or had been devised to multiply fees, or had been properly framed for a very different state of society, were still considered to be the result of unerring wisdom, and eternally essential to the administration of justice. An-

[1] "Qualis sit Grocius Judex uno accipe versu;
Exclamat, dubitat, balbutit, stridet et errat."

"Grocius with his *lantern jaws*
Throws light upon the English laws."

tiquity was constantly vouched as an unanswerable defense for doctrines and procedure which our ancestors, could they have been summoned from their graves, would have condemned or ridiculed. One obstacle to legal improvement, now removed, then operated most powerfully, though insensibly—that antiquated juridical practice could not be touched without diminishing the profits of offices which were held in trust for the Judges, or which they were permitted to sell.[1] The grand foundation of legal improvement was the bill for putting all the subordinate officers in the courts at Westminster, as well as the Judges, on a fixed salary—allowing fees of reasonable amount to be paid into the public treasury towards the just expenses of our judicial establishment. The Benthamites would go still further and abolish court fees altogether; but there seems no hardship in the general rule that the expense of litigation shall be thrown upon the parties whose improper conduct must be supposed to have occasioned it. Arbitrators are paid by the party found to be in the wrong, and the burden of maintaining the Judges appointed by the State ought not to be borne by those who habitually obey the law, and spontaneously render to every man his own.

Upon the accession of Lord Ellenborough, the absurd doctrines about forestalling and regrating were understood, like prosecutions for witchcraft, to be gone for ever, on account of the manly stand he had made against them under Lord Kenyon, and there has not since been any attempt to revive them. The internal free trade in corn was thus practically secured, although the doctrine that free importation of corn ought to be allowed from foreign countries did not follow for near half a century, and Lord Ellenborough himself would probably have regarded with as much horror such an importation, as did his predecessor a corn-merchant buying wheat at Uxbridge to be resold in Mark Lane.

[1] I never saw this feeling at all manifest itself in Lord Ellenborough except once, when a question arose whether money paid into Court was liable to poundage. I was counsel in the cause, and threw him into a furious passion by strenuously resisting the demand. The poundage was to go into his own pocket—being payable to the chief clerk—an office held in trust for him. If he was in any degree influenced by this consideration, I make no doubt that he was wholly unconscious of it.

I do not think that on any other subject the principles were altered by which the Court of King's Bench now professed to be guided. Lord Ellenborough adhered to the rule that in ejectment the legal estate shall always prevail, and that an outstanding term might be set up unless it might be fairly presumed to be extinguished or surrendered, or the defendant vas estopped from contesting the title of the claimant. A more liberal and scientific mode, however, was restored of treating commercial questions, the civil law and foreign jurists were quoted with effect, and the authority of Lord Mansfield was again in the ascendant.

Chief Justice Ellenborough's judgments connected with politics and history I propose hereafter to introduce chronologically as I trace his career after he mounted the bench. At present I think it may be convenient to mention some of the more important questions before him, which derive no illustration or interest from the time they arose, or from any concomitant events.

In now looking over the bulky volumes of "East" and of "Maule and Selwyn," it is wonderful to observe how many of the decisions which they record may already be considered obsolete. A vast majority of them are upon rules of practice and pleading, since remodeled under the authority of the legislature—upon Sessions' law respecting settlements, rating, and bastardy, which has been entirely altered by successive statutes—upon the Quo Warranto law, swept away by the Parliamentary Reform Act and the Municipal Corporations' Amendment Act—upon the law of tithes, abolished by the Tithe Commutation Act—and upon concerted commissions of bankruptcy and the validity of petitioning creditors' debts, which have become immaterial by the new Bankrupt and Insolvent Codes.

I proceed to select a few cases, decided by Lord Ellenborough, which depend upon the common law and the eternal principles of right and wrong, and which must ever be interesting and instructive to those who wish to have a liberal knowledge of our jurisprudence.

In Rodney *v.* Chambers[1] the important question arose upon the legality of a covenant by a husband, who had

[1] 2 East, 283.

been separated from his wife and had been reconciled to her, to pay a certain sum of money annually to trustees for her support in case of a future separation. His counsel contended that such a covenant was contrary to public policy, as tending to encourage the wife to leave her husband, and to disturb the harmony of conjugal life.

Lord Ellenborough: "I should have thought that it would have fallen in better with the general policy of the law to have prohibited all contracts which tend to facilitate the separation of husband and wife; but we cannot reject the present on that ground without saying that all contracts which have the same tendency are vicious—which would extend, for aught I can see, to provisions for pin-money or any other separate provision for the wife, which tends to render her independent of the support and protection of her husband. Deeds of separation are not illegal, and I cannot see how it is more illegal to provide for future than for present separation." [*Judgment against the husband.*]

Whether in consequence of this deed, or from some other cause, the wife soon after separated from her husband and had an affair of gallantry with a military officer. An action for crim. con. being brought, the defense was set up that the plaintiff had voluntarily renounced the society of his wife, and therefore that this action could not be maintained, the *gravemen* of which is the *per quod consortium amisit;* but Lord Ellenborough held that although the husband had made a provision for his wife's separate maintenance, he could not be said to have given up all claim to her society and assistance, and that he sustained an injury from the adultery which brought disgrace upon his name, and might introduce a spurious progeny into his family.[1]

In Parkinson *v.* Lee,[2] in contradiction to the loose maxim that on the sale of goods a sound price implied a warranty of a soundness, Lord Ellenborough, with the rest of the Court, decided that upon a sale of hops, however high the price might be, there was no implied warranty that the commodity should be merchantable, and

[1] Chambers *v.* Caulfield, 6 East, 244. [2] 2 East, 314.

that in the absence of fraud the governing maxim is *caveat emptor*.

Mr. Justice Johnson, an Irish Judge, having been indicted in the Court of King's Bench at Westminster for publishing in the county of Middlesex a libel on Earl Talbot, the Lord Lieutenant of Ireland, and having pleaded in abatement that as he had been born, and had constantly resided in Ireland, he was only liable to be tried in the courts of that country, Lord Ellenborough, in a very elaborate judgment, overruled the plea, thus concluding:—

"If the circumstances of the defendant's birth in Ireland and his residence there at the time of the publication here, have the effect of rendering him not punishable in any court in this country for such publication, this impunity must follow as a consequence from its being no crime in the defendant to publish a libel in Middlesex. Indeed, the argument rests wholly upon this position, that the defendant owed no obedience to the laws of this part of the United Kingdom, so that he has not been guilty of any crime in breaking them. The learned Judge lays down for law that if he remains in Dublin, he may by means of a hired assassin commit a murder in London without being liable to punishment."

The indictment being tried at the bar, the libelous letters published in *Cobbett's Political Register* were proved to be in the handwriting of the defendant, with the Dublin post-mark upon them. They were addressed to the editor of the *Register* in Middlesex, and they contained a request that he would print and publish them. The defendant's counsel insisted that he was entitled to an acquittal on the ground that the evidence was defective.

Lord Ellenborough: "There is no question of the fact of publication by Mr. Cobbett, in Middlesex, of that which is admitted to be a libel; and the only question is, whether the defendant was accessory to that publication? If he were, the offense is established; for one who procures another to publish a libel, is no doubt guilty of the publication, in whatever county it is in fact published, in consequence of his procurement."

The other Judges concurred, and the defendant was found GUILTY.[1]

The Government of the United States of America having in the year 1808 laid an embargo in American ports on all American ships bound for Great Britain, the owners, who were insured in England, gave notice of abandonment to the underwriters, and claimed a total loss. Lord Ellenborough acquired great glory by boldly deciding that, under these circumstances, the English underwriters were not liable. He proceeded on this maxim, that a party insured can never recover for a loss which he himself has occasioned, and he laid down that under every form of government each subject or citizen must be considered as concurring in every act of the supreme power of the country in which he lives :—

"The foundation of the abandonment is an act of the American Government. Every American citizen is a party to that act ; it has virtually the consent and concurrence of all, and, amongst the rest, the consent and concurrence of the assured. The assured having prevented the vessels from sailing, can they make the detention of the vessels the foundation of an action ?"[2]

Where a marriage had been regularly celebrated by a priest in orders, in the face of the church, between a man of full age and a woman under age, who was illegitimate, with the consent of her mother, the father being dead, and they have lived together as man and wife for many years, Lord Ellenborough decided (I think erroneously, although he had the concurrence of two able Judges, Le Blanc and Bayley) that the marriage was void and their children were bastards, because the Court of Chancery had not appointed a guardian to the minor, to consent to the marriage. This most revolting decision might have been avoided by holding on the true principles for construing statutes, that although Lord Hardwicke's Act (26 George II. c. 33) says that all marriages not solemnized in the manner therein mentioned shall be void, this nullification applies only to the marriages of persons in the contemplation of the legislature, and that the marriages of illegitimate minors could not have been in the contemplation of the legislature with respect

[1] 6 East, 583 ; 7 East, 65.

[2] 10 East, 536. Conway *v.* Gray.

to this consent, as the condition requiring the consent of parents or guardians could not be fulfilled—so that this being *casus omissus*, the marriage in question was valid. But Lord Ellenborough's nature was somewhat stern, and he did not dislike a judgment that others would have found it painful to pronounce—rather rejoicing in an opportunity of showing that he was not diverted by any weak sympathies from the upright discharge of his duty.[1]

However, he was always eager to extend the protection of British law to all who were supposed to be oppressed. Upon an affidavit that an African female, formed in a remarkable manner, was exhibited in London under the name of the HOTTENTOT VENUS, the deponents swearing that they believed she had been brought into this country and was detained here against her will, he granted a rule to show cause why a writ of *habeas corpus* should not issue to her keepers to produce her in court, and that in the mean time the Master of the Crown-office and persons to be appointed by him should have free access to her:

> At Venus ætherios inter Dea *Candida* nimbos
> Dona ferens aderat.

She appeared before the master and his associates magnificently attired, offered them presents, and declared that she came to and remained in this country with her free will and consent. A report to this effect being made to the Court, Lord Ellenborough said, "We have done our duty in seeing that no human being, of whatever complexion or shape, is restrained of liberty within this realm. Let the rule be discharged."[2]

One of the most important questions which arose in the Court of King's Bench, while Lord Ellenborough was Chief Justice, was, whether the captain of a man-of-war be liable to an action for damage done by her in running down another vessel, without proof of any personal conduct or default? An award had been made against him by a legal arbitrator, who set out the facts on the face of this award for the opinion of the Court.

[1] Priestly *v.* Hughes, 11 East, 1. Mr. Justice Gross dissented; the decision was condemned by Westminster Hall, and finally the law was rectified by the Legislature. 4 Geo. IV. c. 76; 6 and 7 Wm. IV. c. 85.

[1] Hottentot Venus's Case, 13 East, 384.

Lord Ellenborough: "Captain Mouncey is said to be liable for the damages awarded in this case, by considering him in the ordinary character of master of the ship by means of which the injury was done. But how was he master? He had no power of appointing the officers or crew on board; he had no power to appoint even himself to the station which he filled on board; he was no volunteer in that particular station, by having entered originally into the naval service; he had no choice whether he would serve or not with the other persons on board, but was obliged to take such as he found there and make the best of them. He was the King's servant stationed on board this ship to do his duty there, together with others stationed there by the same authority to do their several duties. How, then, can he be liable for their misfeasance any more than they for his?" [*Award set aside.*][1]

The only occasion when Lord Ellenborough was ever seriously supposed to be swayed by his own interest, was in deciding whether sailors employed in the lobster fishery were privileged from being pressed into the Royal Navy. He had an extreme love of turbot, *with lobster sauce*, and although sailors employed in the deep-sea fishing, where turbots are found, were allowed to be privileged from impressment, the Admiralty had issued orders for impressing all sailors employed in collecting lobsters on the rocks and bringing them to Billingsgate. Writs of *habeas corpus* having been granted for the purpose of discharging several who had been so impressed, the counsel for the Crown argued strenuously that upon the just construction of 2 Geo. III. c. 15, and 50 Geo. III. 108, they were not entitled to any exemption, not being engaged in the deep-sea fishing.

Lord Ellenborough: "I think the policy of the legislature seems to have been directed to the better supplying the inhabitants of the metropolis and other parts of the kingdom with fish, and for that purpose to bring sound and well-flavored fish to our markets at a moderate price. It is contended, however, that the protection extends only to those who are engaged in fishing in deep waters, and that lobsters are found in shallow

[1] Nicholson *v.* Mouncey, 15 East, 381.

waters. Stat. 50 Geo. III. c. 108, does in its preamble recite that 'various sorts of fish do in the winter retire into the deep water, and that for the supply of the metropolis a large class of fishing-boats, which cannot be navigated without additional hands, must be employed, but it enacts, 'that every person employed in *the fisheries of these kingdoms* shall be exempt from being impressed.' Then is not the lobster fishery a fishery, and a most important fishery, of this kingdom, though carried on in shallow water? The framers of the law well knew that the produce of the deep sea, without the produce of the shallow water, would be of comparatively small value, and intended that the turbot, when placed upon our tables, should be flanked by good lobster-sauce. 'Fisheries of these kingdoms' are words of a large scope, embracing all those fisheries from which fish are supplied in a fresh and wholesome state to the markets of these kingdoms, all who are engaged in such fisheries are within the equity of the Act. *Let the rule be absolute.*"[1]

In Chamberlain *v.* Williamson,[2] the curious question arose whether the personal representative of a young lady who had died, being forsaken by her lover who had promised to marry her, could maintain an action against him for breach of the promise to marry. The plaintiff had recovered a verdict with large damages, but a motion was made in arrest of judgment.

Lord Ellenborough: "The action is novel in its kind, and not one instance is cited or suggested in the argument of its having been maintained, nor have we been able to discover any by our own researches and inquiries; and yet frequent occasion must have occurred for bringing such an action. However, that would not be a decisive ground of objection if, on reason and principle, it could strictly be maintained. The general rule of law is *actio personalis moritur cum personâ;* under which rule are included all actions for injuries merely personal. Executors and administrators are the representatives of the temporal property, that is, the goods and debts of the deceased, but not of their wrongs, except where

[1] See Payne and Thoroughgood's Cose, I M. and S. 223.
[2] 2 M. and S. 409.

those wrongs operate to the temporal injury of their personal estate. If this action be maintainable, then every action founded on an implied promise to a testator, where the damage subsists in the previous personal suffering of the testator, would also be maintainable by the executor or administrator. All actions affecting the life or health of the deceased; all such as arise out of the unskillfulness of medical practitioners; the imprisonment of the party brought on by the negligence of his attorney; all these would be breaches of the implied promise by the persons employed to exhibit a proper portion of skill and attention. Although marriage may be considered as a temporal advantage to the party, as far as respects personal comfort, still it cannot be considered in this case as an increase of the individual transmissible personal estate, but would operate rather as an extinction of it. We are of opinion that this judgment must be arrested."

An action being brought by the Earl of Essex against the Honorable and Reverend Mr. Capel, which charged that the defendant had committed a trespass in breaking and entering his grounds, called Cashiobury Park, and with horses and hounds destroying the grass and herbage, and breaking down his fences, the defendant justified, that the fox being a noxious animal and liable to do mischief, he, for the purpose of killing and destroying him, and as the most effectual means of doing so, broke and entered the park with hounds and horses, and hunted the fox. Replication, that this object was—not to destroy the fox, but the amusement and diversion afforded by the chase. After two witnesses had been examined, Lord Ellenborough interrupted the further progress of the case:—

"This is a contending against all nature and conviction. Can it be supposed that these gentlemen hunted for the purpose of killing vermin, and not for their own diversion? Can the jury be desired to say, upon their oaths, that the defendant was actuated by any other motive than a desire to enjoy the pleasures of the chase? The defendant says that he has not committed the trespass for the sake of the diversion of the chase, but as the only effectual way of killing and destroying the fox.

Now, can any man of common sense hesitate in saying that the principal motive was not the killing vermin, but the sport? It is a sport the law of the land will not justify, without the consent of the owner of the land, and I cannot make a new law accommodated to the pleasures and amusements of these gentlemen. They may destroy such noxious animals as are injurious to the commonwealth, but the good of the public must be the governing motive."

Nor was more countenance shown by the Chief Justice to a barbarous sport formerly in great favor with country squires, but which the increased refinement of modern manners has tended to discourage. He refused to try an action for money had and received for a wager on a cock-fight:—

"This must be considered a barbarous diversion, which ought not to be encouraged or sanctioned in a court of justice. I believe that cruelty to these animals, in throwing at them, forms part of the dehortatory charge of judges to grand juries, and it makes little difference whether they are lacerated by sticks and stones, or by the bills and spurs of each other. There is likewise another principle on which I think an action on such wagers cannot be maintained. They tend to the degradation of courts of justice. It is impossible to be engaged in ludicrous inquiries of this sort consistently with that dignity which it is essential to the public welfare that a court of justice should always preserve. I will not try the plaintiff's right to recover the four guineas, which might involve questions on the weight of the cocks and the construction of the steel spurs."[1]

It has long been a disputed question whether the consul of a foreign Prince residing in this country, and acknowledged as such by our Government, be privileged from arrest for debt. A motion was at last made to discharge out of custody the consul of the Duke of Schleswick Holstien Oldenburg, who had been arrested for a debt contracted by him as a merchant in this country:—

Lord Ellenborough: "Every person who is conversant with the history of this country is not ignorant of the occasion which led to the passing of the statute 7 Anne.

[1] Squires *v.* Whisken, 3 Camp. 140.

c. 12. An ambassador of the Czar Peter had been arrested, and had put in bail; and this matter was taken up with considerable inflammation and anger by several of the European Courts, and particularly by that potentate. In order to soothe the feelings of these powers, the act of parliament was passed, in which it was thought fit to declare the immunities and privileges of ambassadors and public ministers from process, and it was enacted 'that in case any person should presume to sue forth or prosecute any such writ or process, such persons being thereof convicted, should be deemed violators of the law of nations and disturbers of the public repose, and should suffer such penalties and corporal punishment as the Lord Chancellor, or the Chief Justice of the Queen's Bench or Common Pleas, or any two of them, should adjudge to be inflicted.' Thus was conferred a great and extraordinary power, which I am glad to think belongs in no other instance to those functionaries. The act goes on to declare that 'all writs and processes that shall in future be sued forth, whereby the person of any ambassador or other public minister of any foreign Prince or State may be arrested or imprisoned, shall be deemed to be utterly null and void.' Here the question is, if this defendant be an ambassador or other public minister of a foreign Prince or State? He certainly is a person invested with some authority by a foreign Prince; but is he a public minister? There is, I believe, not a single writer on the law of nations, nor even of those who have written looser tracts on the same subject, who has pronounced that a consul is *eo nomine* a public minister."

Having minutely examined the authorities, and pointed out that there was no usage to show that by the law of nations a consul is entitled to any exemption from being sued in courts of justice as any ordinary person, a rule was pronounced for continuing the defendant in custody.[1]

Lord Ellenborough, in the great case of Burdett *v.* Abbott,[2] stoutly maintained the doctrine denied by the plaintiff, that the House of Commons has power to imprison for a contempt. Having examined all the authorities cited, he observed,—

[1] Viveash *v.* Becker, 3 M. and S. 284. [2] 14 East. 1.

"Thus the matter stands on parliamentary precedent, upon the recognition by statute, upon the continued recognition of all the Judges, and particularly of Lord Holt, who was one of the greatest favorites of the liberties of the people, and as strict an advocate for the authority of the common law against the privileges of Parliament as ever existed. I should have thought that this was a quantity of authority enough to have put this question to rest. Why should the House of Commons not possess this power? What is there against it? *A priori*, if there were no precedents upon the subject, no legislative recognition, no opinions of Judges in favor of it, it is essentially necessary to the House of Commons, and they must possess it; indeed they would sink into utter insignificance and contempt without it. Could they stand high in the estimation and reverence of the people, if, whenever they were insulted, they were obliged to wait the comparatively slow proceedings of the ordinary Courts of law for their redress? that the Speaker, with his mace, should be under the necessity of going before a Grand Jury to prefer a bill of indictment for an insult offered to the House?"

He then repelled with indignation the quibbling objections made to the form of the warrant, and vindicated the right of the officers to break open the outer door of the plaintiff's house for the purpose of apprehending him.

But I think he did not lay down with sufficient discrimination and accuracy the limits within which parliamentary proceedings may be published without danger of an indictment. Mr. Creevey, M. P. for Liverpool, in a debate in the House of Commons respecting the collection of the public revenue, had made a speech in which he pointed out some alleged misconduct of an Inspector General of Taxes. An inaccurate account of this speech having been published, he printed and circulated a full and correct one. For this he was indicted, on the ground that it reflected on the Receiver General, and therefore was a libel. His counsel contended that he was absolutely entitled to an acquittal on the admission made by the prosecution, that the supposed libel was a true report of a speech made in the House of

Commons. This was very properly overruled by Le Blanc, J., the presiding Judge, on the authority of the conviction and punishment of the Earl of Abingdon, who, having quarreled with his steward, made a scurrilous speech against him in the House of Lords, which he maliciously published with intent to defame him—but the learned Judge erroneously (I think) told the Jury that "if there was anything in Mr. Creevey's published speech which reflected on the prosecutor, the publication of it was a misdemeanor." The defendant being found *Guilty*, a motion was made for a new trial on the ground of misdirection.

Lord Ellenborough: "The only question is, whether the occasion of the publication rebuts the inference of malice arising from the matter of it? We cannot scan what the defendant said within the walls of the House of Commons; but has he a right to reiterate these reflections to the public?—to address them as an *oratio ad populum*, in order to explain his conduct to his constituents? The jury have found that the publication was libelous, and I can see no ground for drawing the subject again into discussion.

The rule was refused, and the defendant was sentenced to pay a fine of £100—but if his object *bonâ fide* was to explain his conduct to his constituents, I think he was entitled to a new trial and to an acquittal.

Lord Ellenborough nobly maintained a freedom of literary criticism. Sir John Carr, Knight, a silly author, brought an action against respectable booksellers for a burlesque upon certain foolish Travels which he had given to the world, relying upon a recent decision of Lord Ellenborough in *Tabbart* v. *Tipper*.

Lord Ellenborough: "In that case the defendant had falsely accused the plaintiff of publishing what he had never published. Here the supposed libel only attacks those works of which Sir John Carr is the avowed author; and one writer, in exposing the absurdities and errors of another, may make use of ridicule, however poignant. Ridicule is often the fittest instrument which can be employed for such a purpose. If the reputation or pecuniary interests of the party ridiculed suffer, it is *damnum absque injuria*. Perhaps the plaintiff's Tour in

Scotland is now unsalable; but is he to be indemnified by receiving a compensation in damages from the person who may have opened the eyes of the public to the bad taste and inanity of his composition? Who prized the works of Sir Robert Filmer after he had been refuted by Mr. Locke, but shall it be said that he might have maintained an action for defamation against that great philosopher, who was laboring to enlighten and to ameliorate mankind? We really must not cramp observations upon authors and their works. Every man who publishes a book commits himself to the judgment of the public, and any one may comment upon his performance. He may not only be refuted, but turned into ridicule if his blunders are ridiculous. Reflection on personal character is another thing. Show me any attack on the plaintiff's character unconnected with his authorship, and I shall be as ready to protect him; but I cannot hear of malice from merely laughing at his works. The works may be very valuable for anything I know to the contrary, but others have a right to pass judgment upon them. The critic does a great service to society who exposes vapid as well as mischievous publications. He checks the dissemination of bad taste, and saves his fellow subjects from wasting their time and their money upon trash. If a loss arises to the author, it is a loss without injury; it is a loss which the party ought to sustain; it is the loss of fame and profit to which he never was entitled. Nothing can be conceived more threatening to the liberty of the press than the species of action before the Court. We ought to resist an attempt against fair and free criticism at the threshold."[1] [*Verdict for the defendants.*]

A good specimen of Lord Ellenborough's *nisi prius* manner is his opinion upon the question whether a man, by nailing to his own wall a board which overhangs his neighbor's field, is liable to an action of trespass:—

"I do not think it is a trespass to interfere with the column of air superincumbent on the close of another. I once had occasion to rule on the circuit that a man who, from the outside of a field, discharged a gun into it, so that the shot must have struck the soil, was guilty

[1] Carr *v.* Hood and another, 1 Campb. 355.

of breaking and entering it. A very learned judge, who went the circuit with me, having at first doubted the decision, afterwards approved of it, and I believe that it met with the general concurrence of those to whom it was mentioned. But I am by no means prepared to say that firing across a field *in vacuo*, no part of the contents touching it, amounts to *clausum fregit*. Nay, if this board commits a trespass by overhanging the plaintiff's field, the consequence is that an aeronaut is liable to an action of trespass at the suit of the occupier of every house and inch of ground over which his balloon passes in the course of his voyage. Whether the action lies or not, cannot depend upon the length of time for which the superincumbent air is invaded. If any damage arises from the overhanging substance, the remedy is by an action on the case."[1]

Peter Hodgson, an attorney, having sued Mr. Scarlett, the celebrated counsel (afterwards Lord Abinger and Chief Baron of the Exchequer), for speaking these words: "Mr. Hodgson is a fraudulent and wicked attorney," it appeared that the words were spoken in an address to the jury in a trial involving the good faith of a transaction which Mr. Hodgson had conducted.

Lord Ellenborough: "The law privileges many communications which otherwise might be considered calumnious, and become the subject of an action. In the case of master and servant, the convenience of mankind requires that what is said in fair communication between man and man, upon the subject of character, should be privileged if made *bonâ fide* and without malice. So a counsel intrusted with the interests of others, and speaking from their information, for the sake of public convenience, is privileged in commenting fairly on the circumstances of the case, and in making observations on the parties concerned and their agents in bringing the cause into court. Now the plaintiff in this case was not only the attorney, but was mixed up in the concoction of the antecedent facts, out of which the original cause arose. It was in commenting on this conduct that the words were used by the defendant. Perhaps they were too strong, but the counsel might

[1] Pickering *v.* Rudd, 4 Camp. 220.

bonâ fide think them justifiable and appropriate. They were relevant and pertinent to the original cause in which they were spoken, and consequently this action is not maintainable." [1]

Richard Thornton having been tried at Warwick upon an indictment, in the King's name, for the murder of Mary Ashford, and found *Not Guilty* by the jury, William Ashford, her brother and heir-at-law, sued out an appeal of murder against him. The appellee being brought by writ of *habeas corpus* into the Court of King's Bench to plead, he pleaded *viva voce* as follows: "Not Guilty, and I am ready to defend the same by my body;" and thereupon taking off a gauntlet which he wore from his right hand, he threw it on the floor of the Court. The appellor having obtained time for that purpose, with a view to deprive the appellee of the privilege of trial by battle, put in a counter-plea, setting forth evidence of circumstances tending strongly to prove his guilt. To this the appellee put in a replication, setting forth facts in his favor, and his former acquittal. The appellor demurred. The question was then very learnedly argued, whether upon this record the appellee was entitled to insist upon trial by battle?

Lord Ellenborough: "The cases which have been cited in this argument, and the others to which we ourselves have referred, show very distinctly that the general mode of trial by law in a case of appeal is by *battle*, at the election of the appellee, unless the case be brought within certain exceptions—as for instance, where the appellee is an infant, or a woman, or above sixty years of age—or where the appellee is taken with the manour, or has broken prison. In addition to all these,—where, from evidence which may be adduced, there is a violent presumption of guilt against the appellee, which cannot be rebutted. Without going at length into the discussion of the circumstances disclosed by the counter-plea and replication, it is quite sufficient to say that this case is not like those in Bracton; it is not one with conclusive evidence of guilt. Contrary evidence must be admitted if there were a trial by jury. The consequence is, that trial by battle having been duly demanded, this

[1] Hodgson *v.* Scarlett, 1 Barn. and Ald. 232.

is the legal and constitutional mode of trial, and it must be awarded. The law of the land is in favor of the trial by battle, and it is our duty to pronounce the law as it is, and not as we may wish it to be. Whatever prejudices therefore may justly exist against this mode of trial, still as it is the law of the land the Court must pronounce judgment for it."

The public now expected to see the lists prepared in Tothill Fields, and the *battle* fought out before the Judges, for whom a special tribunal was to have been erected; but the appellor, who was much inferior in strength to the appellee, cried *craven*, and declining to proceed, the appellee was discharged.[1]

Bidding adieu to pure law, which I am afraid may be thought by many "rough and crabbed," I must now present Lord Ellenborough to my readers as a Peer of Parliament, and give some account of trials before him of a political and historical aspect. Some expected that he would have great success in the Upper House,—and, as often as he spoke there, he made a considerable sensation by his loud tones and strong expressions; but he was not listened to with much favor, for their Lordships thought that he was not sufficiently refined and polished for their delicate ears, and they complained that he betrayed a most unjudicial violence.

His maiden speech, which gave an alarming earnest of these faults, was in the debate on the definitive treaty of peace with France. Having apologized to another Peer, who had risen and begun to speak at the same time with him, and expressed his extreme reluctance to obtrude himself upon their Lordships so very soon after taking his seat among them,—he addressed himself to Lord Grenville's objection, that, contrary to usage and sound diplomacy, this treaty did not renew or recognize former treaties:—

"With regard to the noble Lord's argument, that by the omission the public law of Europe has become a dead letter, I am astonished to observe a man of talents

[1] Ashford *v.* Thornton, 1 Barn. and Ald. 405. In consequence of the scandal occasioned by this case, Stat. 59 Geo. III. c. 46 was passed, abolishing criminal appeals and trial by battle in writs of right, which till then might have been demanded.

fall into such a mistake. To what use would the revival of all the solemn nonsense and important absurdity contained in those treaties have contributed? Are they not replete with articles totally inapplicable to the present situation of Europe, and are they not for this reason become unintelligible trash and absolute waste paper? With respect to the Cape of Good Hope, the cession of which is so much deplored, I say, my Lords, that we are well rid of it. There is no advantage in that post, and the expense of it would have been so great that the country would soon have complained of its retention."

So he went over all the articles of the treaty, and concluded with expressing his warm thanks to the ministers "who had taken the helm of State when others had abandoned it, and who had restored the blessings of peace to their exhausted country."[1]

This bullying style of oratory was not favorably received, but luckily for the orator, on this occasion he could do no harm, Whigs as well as Ministerialists being determined to vote for the treaty,—and the minority of violent anti-Gallicans who censured it amounted only to sixteen.[2]

Lord Ellenborough was quite insensible of the impression made by his violence, and soon after, there being an attack on ministers, he began his defense of them by saying that "he could not sit silent when he heard the capacity of able men arraigned by those who were themselves most incapable, and when he saw ignorance itself pretending to decide on exuberant knowledge possessed and displayed by others."[3] The Chief Justice of England being a peer may, with propriety and effect, take part in the debates of the House of Lords on important questions of statesmanship, such as the causes of war and the conditions of peace, but he should comport himself rather as a judge calmly summing up evidence and balancing arguments, than as the retained advocate of the Government or of the Oppisition.

Lord Ellenborough, till he himself became a cabinet minister, did not again break out with violence, save in opposing a job so gross that he was rather applauded for boldly pronouncing its true character. The Athol fam-

[1] 36 Parl. Hist. 718. [2] Ib. 738. [3] Ib. 1572.

ily, for certain rights in the Isle of Man, of which they were deprived, had been superabundantly compensated; but many years after the bargain into which they had voluntarily and gratefully entered, they made a claim for further compensation,—which the Government, at a time when prodigality of expenditure ranked among ministerial virtues, was disposed to grant. A bill was introduced into Parliament for the purpose, and this bill, without Lord Ellenborough's determined opposition to it, would have been quietly smuggled through He began by moving that certain additional papers upon the subject should be printed, and that the second reading of the bill should be postponed till there might be an opportunity of perusing and considering them. This was resisted by the Earl of Westmoreland.

Lord Ellenborongh: "My Lords, when I look at the papers just now printed, and still reeking from the pres, so that I cannot open them without endangering my health—when I look at a folio volume of 140 uncut pages, presented this day by the noble Earl, I cannot but enter my protest against pretending to debate the merits of this bill under such circumstances—against a proceeding which could only be sanctioned by Parliament in the worst and most corrupt times. I do not ask for a long delay, but I hope that noble Lords will consult their own dignity, and show some deference to public opinion, by granting a short time for information, that we may see whether we are not robbing the Exchequer to put the plunder into the pocket of an accomplice. I pause for a reply. [Having sat down for a few moments he thus resumed.] Then I am to understand, my Lords, that it is your intention to proceed with this bill to-night. With the imperfect lights I have, I shall try to expose to you some of the deformities of the bill. In the first three lines of the preamble, it tells three lies The Isle of Man was never granted in sovereignty by the King of England, but to be held in petty sergeanty by the presentation of two falcons to the King at his coronation. This must have been known to the author of the bill—yet, 'like a tall bully'—I will not finish the line When the noble Earl talks of Acts of

Parliament not binding the Isle of Man, I am astonished at the puerility of the argument; if Acts of Parliament cannot bind the Isle of Man, the Act passed in 1765 for the purchase of the Isle is a nullity. Then we have the assertion that the compensation given to the late Duke of Athol was inadequate. The late Duke named his own sum, and in the course of forty years his family have received £177,000 more than they were entitled to. You propose to open on its hinges a door to fraud, which, like a door described in 'Paradise Lost,' if once opened will never be shut again. Never did I witness a gross job present itself in Parliament in such a bodily form as this. In a few days Parliament will be dispersed, and let us not return to our respective homes with the stigma of having passed such a bill. Let us not at a moment like this, when all classes are ground down with taxes, add to their burdens by voting a boon to mendicant importunity. If indeed our supplies were unlimited, if we could draw upon them without any fear of exhaustion, if the resources of the state grew like the fabled Promethean liver under the beaks and talons of the vultures by whom they are lacerated and devoured, then indeed we might yield to this demand. The times are critical; our dangers are great—the state of our finances is hopeless; let us not, my Lords, imitate the conduct of reckless sailors in a storm, who, when they see the vessel driving on the rocks, instead of trying to save her, throw up the helm, abandon the sails, and fall to breaking open the lockers. If we would avoid the thunderbolts of divine vengeance which seem ready to burst upon us, let us rather deck ourselves in the robes of virtue, and with the love of God let us try to recover the love of the people, of whom we ought to be the protectors, not the spoliators. Be the event what it may, *liberavi animam meam.*"

Several "silken barons" having complained of this language as too strong and unparliamentary, Lord Ellenborough said, "The attack made upon me would have been just had I said anything wantonly to give pain to any noble Lord; but my observations were applied to the measure, not to any individual whatever; and by no

milder words than those I used could the measure be truly characterized."[1]

When the war was renewed after the truce following the supposed treaty of peace signed at Amiens, Lord Ellenborough, in supporting the Volunteer Consolidation Bill, very stoutly defended the prerogative of the Crown to call out the whole population for the defense of the realm:—

"In an age of adventuous propositions," said he, "I did not expect that any noble Lord would have ventured to question this radical, essential, unquestionable, and hitherto never questioned prerogative. My Lords, from the earliest period of our history we have been a military people; and this right, inherent in the Crown from the Norman Conquest, cannot be abandoned without an act of political suicide. I hold in my hand a copy of the Commission of array passed in the fifth year of Henry IV., referred to by Lord Coke in the Fourth Institute, written in the reign of James I., acknowledged by him to be law, and never since repealed or modified. Here, my Lords, we have a solemn recognition of the power of the Sovereign to require, in case of insurrection, or the apprehension of invasion, the services of all his subjects capable of bearing arms—in the words of the Commission, *potentes et habiles in corpore*. This power, my Lords, is inherent in the supreme executive government in every state. Vattel and the other writers on the Law of Nations are unanimous in saying that the power exists in all countries, royal or republican, which have anything like civilized rule. As to the noble Lord's supposition that this prerogative enables the King to throw all classes indiscriminatively into the ranks, I say such an abuse of it is not necessary, and would not be tolerated; men, upon the contemplated emergency, are to be employed according to their habits of life, and to the modes in which they would be most useful. But I trust that in case of extreme necessity no individual who bears the semblance of a man, who values his country and his domestic ties, and who knows his duty to fight body to body, *pro aris et focis*, will stickle about

[1] 5 Parl. Deb. 773–792. After all, to the great discredit of Mr. Pitt's second administration, the bill passed.

the mode in which his energies can be most advantageously brought into action. My Lords, unfitted as I am by education and habit for a campaign, yet in such a case of extreme necessity I should not think I did my duty to my country or to my children, if I did not cast this gown from my back, and employ every faculty of my mind and of my body to grapple with the enemy."

His martial ardor was much applauded, and appeared more wonderful from his speaking on this and all other occasions in the House of Lords attired in his black silk robes and with a judicial wig.[1] His hearers likewise recollected the well-known fact, that when Attorney General he had enlisted in a volunteer corps, and had never been promoted to the ranks out of the awkward squad, the drill-sergeant having in vain tried by chalk and other appliances to make him understand the difference between his right foot and his left, or with which of them he was to step forward on hearing the word "MARCH!"

The only other considerable speech which he made before Mr. Pitt's death was against Lord Grenville's motion for a committee on the Catholic Petition, when he so violently opposed any further concession to the Roman Catholics, that the public were much surprised to find him sitting soon after, in the same cabinet with Lord Grenville and Charles Fox. We cannot be surprised that this Cabinet was so short-lived, although it contained "all the talents" of the country. Lord Ellenborough very sensibly and forcibly pointed out on this occasion the inconvenience arising from giving power to religionists owning the supremacy of a foreign pontiff; but he caused a smile when, in describing the danger of the Pope, again subjecting Great Britain to his sway, he quoted the lines—

> "Jam tenet Italiam, tamen ultra pergere tendit
> Actum inquit nihil est, nisi Pœno milite portas
> Frangimus et mediâ vexillum pono suburrâ." [1]

Although Lord Ellenborough's success as a debater in

[1] Lord Denham was first Chief Justice who appeared in the House of Lords *en bourgeois*.

[2] This appears much less absurd now, after Pio Nono's creation of the archbishopric of Westminster, and his partition of all England into Roman Catholic sees.—*September*, 1855.

the House of Lords was doubtful, he was securing to himself a great reputation as a Criminal Judge. He presided with applause at the trial of Colonel Despard for high treason in plotting the insane scheme to establish a republic after massacring the King, the royal family, and the greatest number of the members of both Houses of Parliament. I was present at this trial, and well remember the Chief Justice's very dignified, impressive, and awe-inspiring deportment. He caused some dissatisfaction by thus abruptly and sarcastically snubbing the great Nelson, who, when called to give the prisoner a character, was proceeding to describe his gallant conduct in several actions: "I am sorry to be obliged to interrupt your Lordship, but we cannot hear what I dare say your Lordship would give with great effect, the history of this gentleman's military life."

At two in the morning I saw the Chief Justice put on the black cap to pronounce the awful sentence of the law on Colonel Despard and his associates, and I heard him utter these thrilling sentences:—

"After a long and I trust a patient trial, you have been severally convicted of the high treasons charged upon you by the indictment. In the course of the evidence which has been laid before the Court, a treasonable conspiracy has been disclosed of enormous extent and most alarming magnitude. The object of that conspiracy, in which you have borne your several very active and criminal parts, has been to overthrow and demolish the fundamental laws and established government of your country; to seize upon and destroy the sacred person of our revered and justly-beloved Sovereign; to murder the various members of his royal house; to extinguish the other branches of the legislature of this realm, and, instead of the ancient limited monarchy, its free and wholesome laws, its approved usages, its useful gradations of rank, its natural and inevitable as well as desirable inequalities of property, to substitute a wild scheme of impracticable equality, holding out, for the purpose of carrying this scheme into effect, a vain and delusive promise of provision for the families of the *heroes* (falsely so called) *who should fall in the contest*—a scheme equally destructive of the interests and happiness of those who

should mischievously struggle for its adoption as of those who should be the victims of its intended execution. This plan has been sought to be carried into effect in the first place by the detestable seduction of unwary soldiers from their sworn duty and allegiance to his Majesty and by the wicked ensnaring of their consciences by the supposed obligation of an impious and unauthorized oath, and next by the industrious association to this purpose of the most needy or the most unprincipled persons in the lowest ranks of society. It is, however, wisely ordained by Divine Providence, for the security and happiness of mankind, that the rashness of such counsels does for the most part counteract and defeat the effects of their malignity, and that the wickedness of the contrivers falls ultimately upon their own heads, affording at the same time the means of escape and security to the intended victims of their abominable contrivances. The leagues of such associates are at all times false and hollow. They begin in treachery to their king and country, and they end in schemes of treachery towards each other. In the present instance your crimes have been disclosed and frustrated through the operation of the same passions, motives, and instruments by which they were conceived, prepared, forwarded, and nearly matured for their ultimate and most destructive accomplishment. Upon the convicted contrivers and instruments of this dangerous but abortive treason it remains for me to perform the last painful part of my official duty. As to you, Colonel Edward Marcus Despard, born as you were to better hopes, intended and formed as it should seem by Providence for better ends; accustomed as you have hitherto been to better habits of life and manners, pursuing as you once did, together with the honorable companions of your former life and services (who have appeared as witnesses to your character during that period), the virtuous objects of loyal and laudable ambition; I will not at this moment point out to you how much all these considerations and the degraded and ignominious fellowship in which you now stand enhance the particular guilt of your crime, sharpening and embittering, as I know they must, in the same proportion the acuteness and pungency of your

present sufferings. I entreat you, however, by the memory of what you once were, to excite and revive in your mind an ardent and unceasing endeavor and purpose during the short period of your remaining life to subdue that callous insensibility of heart of which, in an ill-fated hour, you have boasted, and to regain that salutary and more softened disposition of the heart and affections which I trust you once had, and which may enable you to work out that salvation which, from the infinite mercy of God, may even yet be attainable by effectual penitence and prevailing prayers. As to you, John Wood (naming eight others), the sad victims of his seduction and example, or of your own wicked, discontented, and disloyal purposes, you afford a melancholy but I hope an instructive example to all persons in the same class and condition with yourselves—an example to deter them by the calamitous consequences which presently await your crimes, from engaging in the same mischievous and destructive counsels and designs which have brought you to this untimely and ignominious end. May they learn properly to value the humble but secure blessings of an industrious and quiet life, and of an honest and loyal course of conduct—all which blessings you have in an evil hour willfully cast from you. The same recommendation which I have already offered to the leader in your crimes and the companion in your present sufferings as to the employment of the short remainder of your present existence, I again repeat, and earnestly recommend to every one of you; and may your sincere and deep penitence obtain for you all hereafter that mercy which a due and necessary regard to the interest and security of your fellow-creatures will not allow of your receiving here. It only remains for me to pronounce the sentence of the law upon the crime of which you are convicted. That sentence is, and this Court doth adjudge that, &c."

Then came the dreadful enumeration of the barbarities which the law at that time adjudged to be inflicted on traitors—now commuted for hanging and beheading.[1]

Colonel Despard and six of his associates actually

[1] 28 St. Tr. 315–528.

were executed, and, the revolting parts of the sentence being remitted, the public did not complain of undue severity. The temptation to engage in such conspiracies, which promise suddenly to elevate those who engage in them to power, wealth, and fame, cannot be counteracted by the dread, on failure, of a term of imprisonment, or even of transportation with the hope of a speedy recall. An attempt for selfish purposes to overturn the monarch and to inundate the country with blood cannot be leniently treated as a mere "political offense."

Lord Ellenborough was soon after placed in a most difficult situation on a trial for libel, the prosecutor being no other than Napoleon Buonaparte. This autocrat having extinguished liberty in France and conquered the continent of Europe, was resolved to put down free discussion in England, as a preliminary to the extension of his empire over the British Isles. He was galled by the severe strictures on his conduct which appeared in the London journals, and he remonstrated upon the subject to our ministers, but received for answer that the law, which in England is supreme, gave them no power to interfere. At last there came out in the AMBIGU, a periodical in the French language, published in London by M. Peltier, a French emigrant, a poem and other articles, which in one sense might be construed into an exhortation to assassinate the First Consul. A new representation was made by the French ambassador, and the Attorney General was directed to file a criminal information against the Editor. The most objectionable passage contained the following allusion to the fabled death and apotheosis of Romulus:—

> "Il est proclamé Chef et Consul pour la vie . . . . .
> Pour moi, loin qu'à son sort je porte quelque envie,
> Qu'il nomme, j'y consens, son digne saccesseur;
> Sur le pavois porté qu'on l'elise EMPEREUR;
> Enfin, et Romulus nous rappelle la chose,
> Je fais vœu . . . dès demain qu'il ait *l'apothéose*."

At the trial before Lord Ellenborough and a special jury, Mr. Perceval, then Attorney General, soon after prime minister evidently ashamed of the task imposed upon him, tried to make out that the defendant really

wished to instigate assassination; and Mackintosh, in one of the finest essays ever composed, argued that the publications complained of were mere pieces of jocularity, and that it was the duty of the jury to resist this effort to enslave the press in the only country in which it could proclaim truth to the world.

Lord Ellenborough: "Gentlemen, it is my duty to state to you that every publication that has a tendency to promote public mischief, whether by causing irritation in the minds of the subjects of this realm that may induce them to commit a breach of the public peace or may be injurious to the morals and religion of the country, is to be considered a libel. So if it defames the characters of magistrates and others in high and eminent situations of power and dignity in other countries, expressed in such terms or in such a manner as to interrupt the friendly relations subsisting with foreign states in amity with us, every such publication is what the law calls a libel. Cases of this sort have occurred within all our memories. Lord George Gordon published a libel on the person and character of the Queen of France, and another person grossly vituperated Paul, the late Emperor of all the Russias. In both these cases there were prosecutions, convictions, and judgments, and I am not aware that the law on which these proceedings were founded was ever questioned. If the publication contains a plain and manifest incitement to assassinate magistrates, as the tendency of such a publication is to interrupt the harmony subsisting between the two nations, the libel assumes a more criminal complexion. What interpretation do you put on these words?—'As for me, far from envying him his lot, let him name, I consent to it, his worthy successor: carried on the shield, let him be elected Emperor. Finally (Romulus recalls the thing to mind) I wish that on the morrow he may have his apotheosis.' This is a direct wish by the author, that if Buonaparte should be elected Emperor of that country, of which he then held the government, his death might be instantaneous—or that his destruction might follow on the next day. Everybody knows the supposed story of Romulus. He disappeared; and his death was supposed to be the effect of

assassination. If the words were equivocal and could bear two constructions, I should advise you to adopt the mildest; but if these words can bear this sense and this only, we cannot trifle with our duty; we cannot invent or feign a signification or import which the fair sense of the words does not suggest."

He then proceeded to comment on other passages, and according to the fashion which still prevailed under a supposed injunction of Mr. Fox's Libel Bill not to be found there, he declared that in his opinion the publication was libelous. Thus he concluded :—

"Gentlemen, I trust that your verdict will strengthen the relations by which the interests of this country are connected with those of France, and that it will illustrate and justify in every part of the world the unsullied purity of British Courts of Justice, and of the impartiality by which their decisions are uniformly governed."

In spite of a verdict of *Guilty*, which the jury under this direction immediately returned, hostilities were very soon renewed with France. Owing to this rupture the defendant was not called up to receive judgment—a very undignified course on the part of the Government; for the prosecution, if justifiable, must be considered as having been commenced to vindicate the majesty of English law—not to humor the First Consul of the French Republic.[1]

While Mr. Addington remained prime minister, Lord Ellenborough warmly supported him as a partisan; but when Mr. Pitt resumed the helm, the Chief Justice confined himself almost entirely to the discharge of his official duties, and seemed to have renounced politics for ever.

[1] 28 St. Tr. 529–620.

CHAPTER L.

CONTINUATION OF THE LIFE OF LORD ELLENBOROUGH TILL THE TRIAL OF LORD COCHRANE.

ON the death of Mr. Pitt, after the signal failure of his last confederacy for the humiliation of France, a new ministry was to be formed, and so deplorable was the state of public affairs, that the King's antipathy to Mr. Fox could no longer exclude him from office. Lord Ellenborough little thought that he himself could in any way be comprehended in the new arrangement. However, instead of forming a Cabinet of Lord Howick, Lord Grenville, and those in whose principles Mr. Fox agreed and with whom he had been lately acting in opposition, it was arranged that there should be a *broad bottom* administration, and that, to please the King, Mr. Addington, now become Lord Sidmouth, should be asked to join it. He refused to go in alone, thinking that in that case he might be a cipher, and it was conceded to him that he should bring in a friend with him. He named Lord Ellenborough, to whom personally no objection could be made. The Great Seal was offered to the Chief Justice, and pressed upon him; but he positively refused it, partly from a misgiving as to his competency to preside in Equity, and still more from a foreboding that the new ministry, although it was to include "all the talents" of the country, might be short lived. One great object which the Whigs had in view was to make Erskine Chief Justice of the King's Bench, an office for which he was allowed to be eminently competent; whereas his qualifications for the woolsack were deemed very doubtful. Lord Ellenborough advised that an attempt should be made to induce Sir James Mansfield, the Chief Justice of the Common Pleas, to take the Great Seal, that Erskine might succeed him;

but the offer being made, he at once said "No!"—manfully giving as his reason to the King and to his friends who pressed him to accept, that all his children were illegitimate, although he had married their mother after their birth, and he would not have their illegitimacy constantly proclaimed by accepting a peerage. Lord Ellenborough said "Nothing now remains but for Erskine to become Chancellor himself"—and he swore a great oath that he would make a very *fair one*. With this assurance Fox and Grenville assented to the appointment, and Erskine, considering Equity mere play compared to the common law, very readily acceded to it.

Lord Ellenborough announced his own determination in the following letter to his brother, the Bishop of Elphin:—

"My dear Brother,

"I have not yet the means of communicating any certain intelligence on the subject of Irish arrangements, or should have written to you many days ago. I presume that Lord Redesdale will not retain the Great Seal of Ireland. Public report gives it to Mr. Ponsonby.

"That of Great Britain was offered me last week by Lord Grenville and Mr. Fox, but which for several reasons both of duty, propriety, and prudence I declined. I have had the honor of being placed in the cabinet without any wish on my part, and indeed against my wishes—but a sense both of public and private duty has obliged me to accept a situation for the present, which I could not have refused without materially disturbing an arrangement which is, I think, necessary for the public interests at the present moment. I assure you that I have no motive of ambition or interest inducing me to mix in politics, and will not suffer myself to bear any part in them which can trench upon the immediate duties of my judicial situation. I am aware that I shall incur much obloquy in the hopes of doing some good, and remain, My dear Brother,

"Ever most sincerely and affectionately yours,

"Ellenborough.

"Bloomsbury Square, Thursday,
February 13, 1806." [1]

[1] Earl of Ellenborough's MSS.

It seems strange to us that the incongruity of the positions of Cabinet Minister and Chief Justice should not have struck "All the Talents," but in the hurry of the moment no attention was paid to it any member of the new Government. The members of the Opposition had more leisure and were more acute. As soon as the list of the Cabinet was published, violent paragraphs appeared in the newspapers against the unconstitutional conduct of the Whigs, and notices of motion upon the subject were given in both houses of Parliament.

Lord Ellenborough was taken by surprise when this storm arose, and he was much annoyed by it. Although his seat in the Cabinet was not to be accompanied with any profit, the new dignity had considerably tickled his vanity, and he was really in hopes that he might be of service to the country—particularly in watching over the Church establishment, and checking any concession to the Roman Catholics. He was fully convinced that the objection now started was unfounded, but he made up his mind that he would not condescend to discuss the question in parliament, and thus he addressed the Bishop of Elphin:—

"Bloomsbury Square, March 1, 1806.

"MY DEAR BROTHER,

"My entire occupations for some time past at Westminster and Guildhall have excluded me from the means of learning any news worth sending you.

"A question comes on on Monday in both Houses, which is brought forward under so much misconception of its true merits, and so much party heat and violence, that I shall not wonder if it is carried. The object of those by whom it is brought forward is to obtain a vote of censure upon my appointment to a situation in the Cabinet, on the ground of a supposed incompatibility in that situation in his Majesty's councils with my judicial situation and duties. I think it the more dignified and becoming course not to attend the House upon the occasion. If any vote of the kind intended should be carried, it is my determination to resign my situation as a Privy Councillor; with the duties of which I shall consider the vote (if it has any meaning at all) as pronouncing my judicial function as incompatible. The vote, if it comes

at all, must be under an entire ignorance or misunderstanding of the history of the country and the precedents respecting the situation I fill, its proper and usual duties, and the political duties which the Legislature and the Sovereign have from time to time in the most anxious and important periods connected therewith. You will find this displayed in the debate by Lord Grenville and Mr. Fox, who are fully masters of the subject. I have thought it proper to give you this hint that you may be prepared to expect and to understand the conduct I am determined to adopt.

"Yours, my dear Brother, ever most affectionately,

"ELLENBOROUGH."

When the motions came on, it appeared that there was no ground for apprehension as to the immediate result, for in the House of Commons the proposed censure was negatived by a large majority,[1] and in the House of Lords it was negatived without a division.[2] Next morning Lord Ellenborough, before going into court, despatched the following letter to his brother:—

"8 o'clock, Friday morning, March 5, 1806.
"Bloomsbury Square.

"MY DEAR BROTHER,

"The result of the motion of last night on my subject in the Lords was that it was negatived without a division. I thought it most becoming in my situation and character not to be present.

"In the Commons it was negatived by a majority of 222 to 64, at ¾ past one this morning. I have not yet heard any further particulars. I should be glad to see the debate. I am sure that Lord Grenville and Mr. Fox were perfectly masters of this question in all its bearings, and have no doubt they would discuss it most ably. I am hastening to discharge my daily duties in Court, and can add no more than that I am,

"My dear Brother,

"Ever most affectionately yours,

"ELLENBOROUGH."

On his arrival at Guildhall he received the following letter from Lord Chancellor Erskine:—

[1] 4 Parl. Deb. 284. [2] Ib. 541.

"My DEAR LORD,

"You have been amply rewarded for the firmness with which you resisted the private applications on the subject of your seat in the Cabinet by what passed last night. In our House everything was to your honor; and indeed, though there was a great deal of excellent speaking, there was no debate; at least nothing which could be called so, because, after their batteries were completely silenced, they were under the fire of Lord Holland and Lord Grenville for near two hours, so that, before I put the question, I had only to say that the objection was dead and buried; and, as Lord Eldon had in his speech said that he still hoped your Lordship would withdraw from the Cabinet, I begged to hope in my turn that Lord Bristol, after what he had heard, and which it was impossible he could have been acquainted with, would withdraw his motion. Lord Bristol made no answer. Nothing more was said, and on the question being put, there was nothing that had even the aspect of a division. I hardly heard a voice. David says that in the Commons Fox and Sheridan were most admirable—and the nakedness of the land appeared in their division of 64. I was quite delighted with the result, because I am sure the whole has originated in spleen, and the people have been made a mere stalking-horse for those who have for ever been their oppressors.

"Your Lordship's most faithful and sincere

"ERSKINE.

"Tuesday morning."

But it appears to me that the argument was all on the losing side. That the letter of the law does not recognize the Cabinet as distinguished from the Privy Council is true; but in the practical working of the constitution the Cabinet has been long known as a separate defined body in whom, under the Sovereign, the executive government of the country is vested, and the names of the members of it have been as notorious as the names of the Lord Chancellor, or the First Lord of the Treasury, or the Secretaries of State, for the time being. Without this body the monarchy could not now subsist, and any writer describing our polity would point it out as one of the most important institutions in the State. To say

therefore that whoever may without impropriety be sworn of the Privy Council, may without impropriety be introduced into the Cabinet, is a mere quibble wholly unworthy of Mr. Fox and Lord Grenville. Their concession that the Chief Justice should absent himself from the Cabinet when the expediency of commencing prosecutions for treason or sedition was to be discussed, is decisive against them, and they did not attempt to answer the observation that the circumstance of the Chief Justice being a member of the Cabinet, however pure his conduct might be, was sure to bring suspicion upon the administration of justice before him in all cases connected with politics. The mischief is not confined to the period when he actually continues a Cabinet minister; for when his party is driven from power, although all his colleagues are deprived of their offices, he still presides in the Court of King's Bench, and there is much danger that in Government prosecutions he will be charged with being actuated by spite to his political opponents. As to the fact of the Chief Justice having been a member of a council of regency, the precedents might as well have been cited of Chief Justices in the King's absence governing the realm, and deciding cases in the AULA REGIS. The only real precedent was that of Lord Mansfield from 1757 to 1765, and that was strongly condemned at the time by Lord Shelburne and other great statesmen. The resolution to keep Lord Chief Justice Ellenborough in the Cabinet gave a dangerous shake to the new Government; and public opinion being so strong against it, the advantage expected from it was not enjoyed, for, from a dread of injuring his judicial reputation, he took little part in debate, and remained silent on occasions when, professing to be an independent peer, he might legitimately have rendered powerful help to the Government. It is said that Lord Ellenborough himself ere long changed his opinion, and to his intimate friends expressed deep regret that he had ever been prevailed upon to enter the Cabinet.[1]

[1] The following letters, which passed at the time between Lord Ellenborough and Mr. Perceval, then beginning to take the lead of the Tory party, have been communicated to me. Considering the eminence of the

While the "Talents" remained in office the only Government measure on which the Lord Chief Justice spoke in the House of Lords was the Bill for abolishing the

writers and the permanent interest of the subject, I think it right that they should be preserved.

MR. PERCEVAL TO LORD ELLENBOROUGH.

"MY DEAR LORD,

"I believe Mr. Spencer Stanhope will certainly give notice to-morrow in the House of Commons of his intention to submit some motion to the House on the subject of your Lordship's situation in the Cabinet. Feeling as I do upon the subject, and convinced as I am after a great deal of reflection upon it, that the propriety of the appointment cannot be maintained in argument, I should think that I acted unkindly, if not treacherously, by you (especially as with these feelings I shall be obliged to take a part myself in the debate upon this motion), if I did not once more, with great earnestness, recommend to you the expediency of reconsidering the subjeet, and of retiring willingly in deference to the public sentiment from the situation in question. I advise it the more readily, because I am sure you do not covet the situation yourself, and that you are risking your own character, which is too important a public possession to be risked lightly, out of deference to the opinions and feelings and wishes of others, rather than your own. And however unpleasant it may be either to you or your friends to take a step which apparently acknowledges that you have fallen into an error, yet, as you may depend upon it, it will come to this at last, or else raise a ferment of which at present you have no conception, and in which your new friends will leave you to yourself: it must be clearly less unpleasant to you, when the implied acknowledgment will amount to no more than that you have committed an error, into which under the circumstances any person might very naturally have fallen, than to wait till the time when this implied acknowledgment will not only be that you have committed an error, but that you have tried to persevere in it after it was pointed out to you, and against, if not the force of argument, at least the weight of public opinion. Your friends who advise you against the step which I now recommend, cannot, I am certain, see this subject in all its bearings or they could not, as your friends, so advise you. You, and they both, living perhaps encircled a good deal by our own friends (who borrow their impressions upon such subjects in great measure from yourselves, and do little more than reflect back upon you your own opinions), do not come in contact with the opinion of the public. It requires some effort, as I feel at this moment, to communicate an unwelcome truth, and therefore few people will have the hardihood to tell you how apparently unanimous the public opinion is against the Government on this point. The confidence and kindness with which you have uniformly favored me, have drawn from me this frank expression of my sentiments. I trust you are not offended at it. As far as party feeling against the Government could go, I assure you I should covet the discussion. And I cannot trace in my own mind any improper bias which actuates me, unless indeed the disinclination which I feel to be forced into a situation where my duty will oblige me to take a part in a debate, possibly unpleasant to your feelings, may be deemed an improper bias.

"I am, my dear Lord,

"Yours most truthfully and faithfully,

"Lincoln's Inn Fields, Feb. 23, 1806." "SP. PERCEVAL.

Slave Trade; and of his speech on this occasion, which seems to have been elaborate and eloquent, the following is the only record extant:—

"Lord Ellenborough supported the bill in a variety of

LORD ELLENBOROUGH TO MR. PERCEVAL.

"MY DEAR SIR,

"I should not truly state my own feelings upon the occasion, if I did not say that I received on many accounts very great pain from the perusal of your letter.

"You will no doubt conscientiously pursue your own line of conduct. I have only to request that you will have the charity to suppose that I am equally guided by principles of duty, when I declare my intention of abiding and conforming to the sense which Parliament may think fit to express on my subject. I would, as you advise me to do, retire in deference to the public sentiment, if I was perfectly satisfied that the sentiment of the unprejudiced part of the public did not accord with my own—but I am yet to learn that the judment of those who consider the question without party bias is against me, and am wholly at a loss to discover what duties, in respect of advice to the Crown, are cast upon me in the character of what is called a Cabinet Councillor which do not already attach upon me as a member of the Privy Council, under the oath I have taken in case his Majesty should think fit to require my advice as a Privy Councillor (as he has often done that of others) upon subjects relative to the executive Government of the country. However, as you tell me you are 'convinced that the propriety of the appointment cannot be maintained in argument,' I will forbear to waste your time or my own in unavailing discussions, and remain, with thanks for the frankness and explicitness of your communication, and a strong sense of former kindness, very sincerely yours,

"ELLENBOROUGH."

MR. PERCEVAL TO LORD ELLENBOROUGH.

"Lincoln's Inn Fields,
"Monday evening, Feb. 24.

"MY DEAR LORD,

"I cannot possibly permit the letter which I received from you this morning, to be the last which should pass between us upon the subject to which it relates. I cannot fail to perceive that you are much offended by my former letter; and I must endeavor to remove, so far as I can, the grounds for that offense, which any objectionable expressions in it may have afforded. If there is any one word in it which intimates or insinuates the slightest or most distant suspicion that you will not act, or have not acted, upon this occasion, as upon all others, upon what you conceive to be the true principles of duty, or which conveys the least ground for your thinking it necessary to request that I would have *the charity to suppose* that you would act upon such principles, I can only say that I have been most unfortunate in the language which I have used, and have conveyed a sentiment directly the reverse of what I felt, as well as of what I intended to convey. From some expressions of my letter, which you repeat, underlined, I fear that in expressing strongly what I strongly felt, I have used language which you have thought disrespectful; if I have done so, I am extremely sorry for it, and ask your pardon most readily for the *manner* in which I have executed my purpose. But for the *matter* of it, I am so con-

arguments, and, adverting to the speech of a noble and learned Lord (Eldon), expressed his astonishment that any noble Lord who had supported and approved of the same measure, in the shape of an order of council, should

scious that I never acted by you or anybody under a more sincere impression of personal regard, than in writing that letter, that though I must be sorry for my failure, I should even now reproach myself if I had not sent it.

"When I referred to the sentiments of the public being against the Government upon this question, I ought certainly to have been aware that nothing is more difficult than to collect with any accuracy the public opinion. But I did so refer to them because I had conversed with, and collected the sentiments of, many persons wholly unconnected with party, of different descriptions, some of them members of our own profession (whose judgments form no unimportant criterion), and also of several persons *friendly to the present Government*, and I have not met with a single one who has doubted the impropriety of the appointment. You say 'that you are yet to learn that the judgment of persons who consider the question without party bias, is against you.' I fully believe that you are so, and it was my belief of this which is my only justification for troubling you with my letter. Your situation is so elevated that you have no chance of obtaining information upon such a subject, unless some real friend will, as I have done, risk, with the hope of serving you, the chance of offending. I have exposed myself to that chance, and I fear have been unfortunate. Even now I doubt whether you distinguish between the *illegality*, which you certainly may strongly contest, and the *impropriety* of this appointment, its inexpediency, its tendency to diminish (not the true upright and independent administration of justice, for in your instance I am sure that will never be), but the satisfactory administration of it in the opinion, or, if you please, the prejudices of the people. It was this impropriety that I stated (in terms which I wish I had not used because they offended you) could not be maintained in argument. I will however trouble you no further, and should be ashamed of having troubled you so long, but for the concluding sentence of your note, in which, in expressing a strong sense of my *former* kindness you too plainly imply that in this instance you suppose me to have departed from it. And I thought it but due to that kindness and friendship which I wished still to retain, or recover, not to spare myself any trouble in endeavering to remove as far as I can the unfavorable impression you have received. I hardly know how to hope that, under the immediate effect of present impressions, your opinion of my former letter can be changed, I hope however you will do me the favor to keep what I have written, and if when temporary feelings may have passed by, you will fairly ask yourself what possible motive I could have had to have written an unpleasant letter to you on this or any other subject, except that which I profess, I think you will be convinced that you can find no trace of any intentional departure from the most friendly kindness and good will in any thing I have done.

"I am, my dear Lord,

"Very sincerely yours,

"Tuesday morning." "SP. PERCEVAL.

LORD ELLENBOROUGH TO MR. PERCEVAL.

"MY DEAR SIR,

"I received your letter this morning as I was setting out for Guildhall, or would have immediately thanked you for the kind

oppose this bill, unless it was that they proceeded from different men. The ex-Chancellor and the Chief Justice thereupon got into a sharp altercation, which was put an end to by Lord Lauderdale requiring the clerk at the table to read the Standing Order against *taxing speeches*."[1]

Lord Ellenborough regularly attended the trial of Lord Melville, and as to the 2nd, 3rd, 5th, 6th, 7th, and 8th Articles, laying his hand on his breast, said with great emphasis and solemnity, "GUILTY, UPON MY HONOR." The acquittal of the noble Viscount upon the 2nd Article, charging him with having connived at the improper drawing of money of Mr. Trotter, without alleging that he himself derived any profit from the money so drawn, showed that impeachment can no longer be relied upon for the conviction of state offenses, and can only be considered a test of party strength. Almost all good Tories said NOT GUILTY, and the independent course taken by Lord Ellenborough very much raised him in public estimation.[2]

The following letter shows that he acted cordially with Mr. Fox, and was confidentially consulted by that great statesman in the attempt then made to bring about a pacification with Napoleon contrary to the wishes of the King:—

"*Secret and Confidential.*

"Many thanks to you, my dear Lord, for your note. The argument is quite satisfactory, and I should hope

terms in which it is written and the friendly spirit it breathes. Nothing will give me I assure you more pain than that events should occasion an interruption of that confidence and regard between us from which I had long derived so much satisfaction, and which I had once hoped would endure as long as we both live. I cannot but acknowledge that the admonitions to retire and some other expressions in your letter appeared to me of a harsher tone and temper than you would, I thought, on consideration have been pleased with yourself or have adopted in any communication with me, but they excited more of sorrow than anger in my mind. Upon the principal question between us I forbear to say one word—in the position in which it at present stands it cannot be further touched by either of us with any degree of delicacy.

"I remain, with a sincere regard for your character and conduct which I feel neither time or events ever can efface,

"Most faithfully yours,

"ELLENBOROUGH."

[1] Parl. Deb. vol. vii. p. 234.

[2] 29 St. Tr. 549-1482.

Holland would not be a point on which there would be much difficulty. I have heard something to-day which makes me apprehend that internal difficulties, and those from the highest quarter, will be the greatest. I hope nothing will prevent your attending, Monday, at eleven, for a consultation of greater importance in all its consequences never did nor never can occur. Shall we shut the door for ever to peace with France? Shall we admit that a council and ministers are nothing? that the opinion of the K. is everything, from what suggestions soever he may have formed that opinion? These are qnestions of some moment. Let us act honorably and fairly (in as conciliating a *manner* as possible, I agree). We may be foiled, the country may be ruined, but we cannot be dishonored. I am, with great regard, my dear Lord, "Yours ever,

"C. J. Fox.

"St. Anne's Hill, Saturday evening."

On the death of Mr. Fox, Lord Ellenborough continued a cabinet minister, under Lord Grenville, till the entire dissolution of the government of All the Talents. Notwithstanding his objection to Roman Catholics sitting in Parliament, he had given his consent in the Cabinet to the little bill (which produced such great effects) for permitting Roman Catholics to hold the rank of field officers in the army; but when the rupture actually took place, his sympathies were with the King, and he declared it to be not unreasonable or unconstitutional that the King's ministers should be required to pledge themselves to propose no farther concessions to the Roman Catholics.[1] However, the Chief Justice

[1] Lord Ellenborough had once looked favorably on the claims of the Irish Roman Catholics, but had become mnch afraid of them by the representations of his brother, the Bishop of Elphin, who had been exposed to serious perils in the Irish rebellion of 1798, in which he displayed great gallantry. When Lord Cornwallis, during the insurrection, was riding with his staff at the head of a column in march, the first object he saw through the haze, one morning, was the Bishop on horseback, coming to join him, with a sword by his side, and pistols in his holsters. This same Bishop carried off in his carriage, from his own door, a country neighbor, who he heard was to join the rebels the next day, and drove him 20 miles, into Dublin. He had induced him to enter by courteously offering him *a lift*, but the moment the door of the carriage was closed upon his friend, he collared him, and told him he was his prisoner, and the coachman, having his orders, whipped his horses into a gallop. The Bishop had all the qualities of a Christian pastor,

parted on good terms with Lord Grenville, who gave him the following testimony to his honorable conduct while they had acted together in the Cabinet:—

"Downing Street, March 13, 1807.

"MY DEAR LORD,

"The matter which has of late occupied our attention, is now brought to a state which appears to leave no possibility of the further continuance of the government. Although I have the misfortune of differing from your Lordship on the expediency of the measures which have been in question, yet the frank and honorable conduct which has at all times marked every part of the share which you have taken in the deliberations and measures of the government, while it subsisted, makes me extremely anxious to have, if possible, the satisfacof conversing with you to-morrow morning, previous to my going to the Queen's house, in order that I may have the opportunity of stating to you the course which we have taken during the last two days, and the grounds on which we have acted.

"Whatever be the course of the events to which these transactions may lead, I shall ever retain a strong sense of the conduct which you have held on all occasions during the time that we have acted together, and a sincere respect for your character.

"I have the honor to be, my dear Lord,

"Most truly and faithfully,

"Your most obedient, humble servant,

"GRENVILLE."

Henceforth, Lord Ellenborough, estranging himself entirely from the Whigs, entered into a still closer alliance with Lord Sidmouth, and, till his friend and patron again returned to office under Lord Liverpool, joined the small Addingtonian opposition in the House of Lords.

Accordingly, on the motion for the restoration of the Danish Fleet, he declared "that in his opinion there was no act that had ever been committed by the Govern-

but it was thought that, if in the law, he would have made a still better Chief Justice than his brother Edward, although it is rather doubtful whether Edward, in the church, would have displayed the mild virtues expected in a Bishop.

ment of this country which so much disgraced its character and stained its honor as the expedition to Copenhagen; as an Englishman he felt dishonored whenever the national honor was tarnished; the expedition reminded him of

> "—— the ill-omen'd bark
> Built in th' eclipse, and rigg'd with curses dark."

He thought the object it had in view was most unjustifiable, and that even the success of that object would bring great calamity upon the country. When necessity was pleaded, noble Lords should recollect that this plea rested on an overwhelming, inevitable urgency to do a particular act—not *on mere predominating convenience.* Many persons considered it justification enough that it might be very convenient for the country in this instance to apply to its own use what belonged in full property to another. This doctrine he was so much in the habit of rebrobating at the *Old Bailey*, that he could not help expressing himself with some warmth when he found it set up and acted upon by their Lordships." [1]

Having defended the Bill by which the Attorney General was empowered to hold bail in cases prosecuted by him, and Earl Stanhope having said that such language might have been expected from Jeffreys or Scroggs, Lord Ellenborough thus retorted:—

"My Lords, from my station as Chief Justice of England I am entitled to some degree of respect; but I have been grossly calumniated by a member of this House, who has compared me to monsters who in former reigns disgraced the seat of justice—such as Scroggs and Jeffreys. I shall treat the calumny and the calumniator with contempt."

Earl Stanhope: "I meant no such comparison, and if the noble and learned Lord from intimate acquaintance has found a resemblance, this must be one of his singularities; but his rash precipitancy in misapplying what fell from me, convinces me that it might be dangerous to delegate the power created by the Bill even to the noble and learned Lord." [2]

The Bill passed, but, being most unnecessary and most odious, it was not acted upon by any Attorney

[1] 10 Parl. Deb. 655. [2] 11 Parl. Deb. 710.

General, not even by Sir Vicary Gibbs, its author, who, by his oppressive multiplication of ex-officio informations, brought himself and his office into sad disrepute.

One of these informations, which excited much interest, was filed against Mr. Perry, the proprietor of the *Morning Chronicle.* He was a gentleman of considerable talents and high honor, who did much to raise to respectability and distinction the profession of a journalist in this country. He abstained from all attacks on private character; he was never influenced by any mercenary motive; and his paper, although strongly opposed to the Tory Government, steadily adhered to true constitutional principles. An article in the *Morning Chronicle*, after calmly discussing the Catholic question, thus concluded: "What a crowd of blessings rush upon one's mind that might be bestowed upon the country in the event of a total change of system! Of all monarchs indeed since the Revolution, the successor of George III. will have the finest opportunity of becoming nobly popular."

Sir Vicary's information alleged that the defendant "being a malicious, seditious, and evil-disposed person, and being greatly disaffected to our Sovereign Lord the King and to his administration of the government of this kingdom, and most unlawfully, wickedly, and maliciously designing, as much as in him lay, to bring our said Lord the King, and his administration of the government of this kingdom, and the persons employed by him in the administration of the government of this kingdom into great and public hatred and contempt among all his liege subjects, and to alienate and withdrawn from our said Lord the King the cordial love and affection, true and due obedience, fidelity and allegiance of the subjects of our said Lord the King, did print and publish a certain scandalous, malicious, and seditious libel" [setting out the words which I have copied].

Mr. Perry appeared as his own counsel, and defended himself with singular modesty, tact, and eloquence.

At his request the following paragraph was allowed to be read from the same newspaper:—

"The Prince has thought it his duty to express to his

Majesty his firm and unalterable determination to preserve the same course of neutrality which he has maintained, and which, from every feeling of dutiful attachment to his Majesty's person, from his reverence of the virtues and from his confidence in the wisdom and solicitude of his Royal Father for the happiness of his people, he is sensible ought to be the course that he should pursue."

Lord Ellenborough, in summing up to the Jury, after commenting upon the weight to be given to this paragraph, thus proceeded :—

"The next and most important question is, what is the fair, honest, candid construction to be put upon the words standing by themselves. Is the passage set out in the information *per se* libelous? The first sentence easily admits of an innocent interpretation. 'What a crowd of blessings rush upon one's mind that might be bestowed upon the country in the event of a total change of system!' The fair meaning of the expression, 'change of system,' I think is a change of political system—not a change in the frame of the established government—but in the measures of policy which have been for some time pursued. By 'total change of system' is certainly not meant subversion or *demolition*, for the descent of the crown to the successor of his Majesty is mentioned immediately after. The writer goes on to to speak of the blessings that may be enjoyed upon the accession of the Prince of Wales; and therefore cannot be understood to allude to a change inconsistent with the full vigor of the monarchical part of the constitution. Now I do not know that merely saying, there would be blessings from a change of system, without reference to the period at which they may be expected, is expressing a wish or a sentiment that may not be innocently expressed in reviewing the political condition of the country. The information treats this as a libel on the person of his Majesty, and his personal administration of the government of the country. But there may be error in the present system, without any vicious motives, and with the greatest virtues, on the part of the reigning Sovereign. He may be misled by the ministers he employs, and a change of system may

be desirable from their faults. He may himself, notwithstanding the utmost solicitude for the happiness of his people, take an erroneous view of some great question of policy, hither foreign or domestic. I know of but ONE BEING to whom error may not be imputed. If a person who admits the wisdom and the virtues of his Majesty, laments that in the exercise of these he has taken an unfortunate and erroneous view of the interests of his dominions, I am not prepared to say that this tends to degrade his Majesty, or to alienate the affections of his subjects, I am not prepared to say that this is libelous. But it must be with perfect decency and respect and without any imputation of bad motives. Go one step farther, and say or insinuate, that his Majesty acts from any partial or corrupt view, or with an intention to favor or oppress any individual or class of men, and it would become most libelous. However, merely to represent that an erroneous system of government obtains under his Majesty's reign, I am not prepared to say exceeds the freedom of discussion on political subjects which the law permits. Then comes the next sentence: 'Of all monarchs, indeed, since the Revolution, the successor of George the Third will have the finest opportunity of becoming nobly popular.' This is more equivocal; and it will be for you, gentlemen of the Jury, to determine what is the fair import of the words employed. Formerly it was the practice to say, that words were to be taken in the more lenient sense: but that doctrine is now exploded; they are not to be taken in the more lenient or more severe sense; but in the sense which fairly belongs to them, and which they were intended to convey. Now, do these words mean that his Majesty is actuated by improper motives, or that his successor may render himself nobly popular by taking a more lively interest in the welfare of his subjects? Such sentiments, as it would be most mischievous, so it would be most criminal to propagate. But if the passage only means that his Majesty during his reign, or any length of time, may have taken an imperfect view of the interests of the country, either respecting our foreign relations, or the system of our internal policy, if it imputes nothing but honest error, without moral blame, I am not prepared

to say that is a libel. The extract, read at the request of the defendants, does seem to me too remote in point of situation in the newspaper to have any material bearing on the paragraph in question. If it had formed a part of the same discussion, it must certainly have tended strongly to show the innocence of the whole. It speaks of that which every body in his Majesty's dominions knows, his Majesty's solicitude for the happiness of his people; and it expresses a respectful regard for his paternal virtues. What connection it has with the passage set out in the information, it is for you to determine. Taking that passage substantively and by itself, it is a matter, I think, somewhat doubtful, whether the writer meant to calumniate the person and character of our august Sovereign. If you are satisfied that this was his intention by the application of your understandings honestly and fairly to the words complained of, and you think they cannot properly be interpreted by the extract which has been read from the same paper, you will find the defendants *guilty*. But if, looking at the obnoxious paragraph by itself, you are persuaded that it betrays no such intention; or if feeling yourselves warranted to import into your consideration of it a passage connected with the subject, though considerably distant in place and disjoined by other matter, you infer from that connection that this was written without any purpose to culumniate the personal government of his Majesty, and render it odious to his people, you will find the defendants *not guilty*. The question of intention is for your consideration. You will not distort the words, but give them their application and meaning as they impress your minds. What appears to me most material, is the substantive paragraph itself; and if you consider it as meant to represent that the reign of his Majesty is the only thing interposed between the subjects of this country and the possession of great blessings, which are likely to be enjoyed in the reign of his successor, and thus to render his Majesty's administration of his government odious, it is a calumnious paragraph, and to be dealt with as a libel. If, on the contrary, you do not see that it means distinctly, according to your reasoning, to impute any purposed mal-administration to

his Majesty, or those acting under him, but may be fairly construed as an expression of regret that an erroneous view has been taken of public affairs, I am not prepared to say that it is a libel. There have been errors in the administration of the most enlightened men. I will take the instance of a man who for a time administered concerns of this country with great ability, although he gained his elevation with great crime—I mean *Oliver Cromwell*. We are at this moment suffering from a most erroneous principle of his government in turning the balance of power against the *Spanish* monarchy in favor of the House of *Bourbon*. He thereby laid the foundation of that ascendency which, unfortunately for all mankind, *France* has since obtained in the affairs of *Europe*. The greatest monarchs who have ever reigned—monarchs who have felt the most anxious solicitude for the welfare of their country, and who have in some respects been the authors of the highest blessings to their subjects, have erred. But could a simple expression of regret for any error they had committed, or an earnest wish to see that error corrected be considered as disparaging them, or tending to endanger their government? Gentlemen, with these directions the whole subject is for your consideration. Apply your minds candidly and uprightly to the meaning of the passage in question; distort no part of it for one purpose or another; and let your verdict be the result of your fair and deliberate judgment."

The defendant was acquitted.[1] As soon as the foreman of the jury had pronounced the verdict, Sir Vicary Gibbs, the Attorney General, turning round to me, said, "We shall never get another verdict for the Crown while the Chief Justice is in opposition." His Lordship certainly since the dissolution of the Talents Administration had kept up an intimacy with Addington and the Grenvilles, but it was a mere piece of Mr. Attorney's spleen to suppose that the Judge was actuated by any desire to mortify the existing Government, although the possibility of such a suspicion is argument enough against a Chief Justice of the King's Bench ever being a member of any Cabinet.

[1] 31 St. Tr. 335; 2 Camb. 398.

Lord Ellenborough had a violent hatred of libelers, and generally animaverted upon them with much severity. He soon after did his best to convict Leigh Hunt, then the editor of the EXAMINER, upon an *ex-officio* information for publishing an article against the excess to which the punishment of flagellation had been carried in the army:—

"Gentlemen," said he to the jury, "we are placed in a most anxious and awful situation. The liberty of the country—everything that we enjoy—not only the independence of the nation, but whatever each individual among us prizes in private life, depends upon our fortunate resistance to the arms of Buonaparte and the force of France, which I may say is the force of all Europe combined under that formidable foe. It becomes us, therefore, to see that there is not in addition to the prostrate thrones of Europe an auxiliary within this country, and that he has not the aid for the furtherance of his object of a British press. It is for you, between the public on the one hand, and the subject on the other, to see that such a calamity does not overwhelm us. Is this the way of temperate discussion? The first thing that strikes us is this ONE THOUSAND LASHES in large letters. What is this but to portray the punishment as a circumstance of horror, and excite feelings of detestation against those who had inflicted and compassion for those who had suffered it? Then he goes into an irritating enumeration of the miseries which do arise from the punishment, and which do harrow up the feelings of men who consider them in detail. This punishment is an evil which has subsisted in the eyes of the legislature and of that honorable body who constitute the officers of the army, and it has not been remedied. If there are persons who really feel for the private soldier, why not remedy the evil by private representation?[1] But when, as at this moment, everything depends on the zeal and fidelity of the soldier, can you conceive that the exclamation ONE THOUSAND LASHES, with

[1] This reminds one of the Emperor Alexander's observations when he visited England in 1815, that "he thought the English 'Opposition' a very useful institution, but he rather wondered why they did not convey their remonstrances to the King's Ministers in private.

strokes underneath to attract attention, could be for any other purpose than to excite disaffection? Can it have any other tendency than that of preventing men from entering into the army? Can you doubt that it is a means intended to promote the end it is calculated to produce? If its object be to discourage the soldiery, I hope it will be unavailing. These men who are represented as being treated ignominiously have presented a front—and successfully—to every enemy against which they have been opposed. On what occasion do you find the soldiery of Great Britain unmanned by the effect of our military code? This publication is not to draw the attention of the legislature or of persons in authority with a view to a remedy, but seems intended to induce the military to consider themselves as more degraded than any other soldiers in the world—and to make them less ready at this awful crisis to render the country that assistance without which we are collectively and individually undone. I have no doubt that this libel has been published with the intention imputed to it, and that it is entitled to the character given to it by the information."[1]

Nevertheless, to the unspeakable mortification of the noble Judge, the jury found a verdict of *Not Guilty*.[2]

Such scandal was excited by the mode in which Government prosecutions for libel were now instituted and conducted, that Lord Holland brought the subject before the House of Lords, and, after a long speech, in which he complained of the power of the Attorney General to file criminal informations, and the manner in which it had recently been abused, moved for a return of all informations *ex-officio* for libel from 1st January, 1801, to 31st December, 1810.

Lord Ellenborough: "The motion of the noble Baron includes the period during which so humble an indi-

[1] This was manifestly usurping the functions of the Jury as to matter of fact; but it was then erroneously supposed to be in conformity to the power given by Fox's Libel Act, which is merely for the Judge to deliver his opinion on matter of law as in other cases.

[2] 31 St. Tt. 367. This acquittal was mainly produced by the eloquence of Mr. Brougham; but in spite of all his efforts another client was convicted at Lincoln before Baron Wood, for publishing the same libel in a country newspaper. Rex *v.* Drakard, 31 St. Tr. 495.

vidual as myself had the honor of filling the office of Attorney General. Whether he means to refer to my conduct I know not—but as he made no allusion to it, I do not think myself bound to defend what has not been attacked; but I must say with reference to the learned gentlemen who succeeded me, that their discharge of their public duty ought not lightly or captiously be censured nor made the subject of invidious investigation on grounds of hazardous conjecture. The law of informations *ex-officio* is the law of the land, resting on the same authority with the rights and privileges which we most dearly prize. It is as much law as that which gives the noble Lord the right of speaking in this House; it is as much law as the law which puts the crown of this realm on the brow of the Sovereign. If the noble Lord questions the expediency of the law of informations, why not propose that it be repealed? This would be the direct and manly course. I deprecate in this House violent and vague declamations [*Hear! hear!* from Lord Holland.] I am aware to what I subject myself. The noble Lord may call all that I have said a mere *tirade*. [*Hear! hear!* from Lord Holland.] I am used to tumults and alarms—they never yet could put me down. Were I to die next moment, I will not yield to violence. My abhorrence of the licentiousness of the press is founded on my love of civil liberty. The most certain mode of upsetting our free constitution is by generating a groundless distrust of the great officers of justice, and teaching the people to despise the law along with those who administer it. I repeat that I know nothing more mischievous in its tendency than inoculating the public mind with groundless apprehensions of imaginary evils."

The violence of this language called forth considerable animadversion from several noble Lords. Lord Stanhope declared that he was afraid of entering into any controversy with the "vituperative Chief Justice' —justifying himself with the example of a peer celebrated for his politeness, of whom he told this anecdote: Lord Chesterfield, when walking in the street, being pushed off the flags by an impudent fellow, who said to him, "I never give the walk to a scoundrel," the great

master of courtesy immediately took off his hat, and making a low bow, replied, "Sir, I always do."[1]

Lord Holland: "The noble and learned Chief Justice has complained of the vehemence and passion with which I have delivered myself; but he should have had the charity to recollect that I have not the advantage of those judicial habits from which he has profited so much. The practice of the duties of the highest criminal judge and the exercise of temper which those duties require can alone bring the feelings of men to a perfect state of discipline, and produce even in the delivery of the strongest opinions the dignified and dispassionate tone which ever adds grace to the noble and learned Lord's oratorical efforts, and has so signally marked his demeanor in this night's debate."

Sir James Mackintosh, who was present at this debate, in giving an account of it, says: "I was much delighted with the ingenious, temperate, and elegant speech of Lord Holland, on the abominable multiplication of criminal informations for libels, and much disgusted with the dogmatism of Lord Ellenborough's answer. Lord Holland spoke with the calm dignity of a magistrate, and Lord Ellenborough with the coarse violence of a demagogue."[2]

The Chief Justice's next remarkable appearance in the House of Lords, was in a discussion respecting the "Delicate Investigation." While he was in the Cabinet, in 1806, a commission had been addressed to him and several others by George III., to inquire into certain charges brought forward against the Princess of Wales. After examining many witnesses, they presented a report acquitting her of conjugal infidelity, but stating that she had been guilty of great levity of conduct, and recommending that she should be admonished to conduct herself more circumspectly in future.[3] These ani-

[1] 19 Parl. Deb. 129–174.

[2] Life of Mackintosh.

[3] I have seen the original draught of the Report in Lord Ellenborough's handwriting, and the draught of a second very elaborate Report by him upon a communication to the Commissioners from the King. After a very long commentary on the evidence of the witnesses, the Commissioners say that "there are no sufficient grounds for bringing Her Royal Highness to trial for adultery, but that she had comported herself in a manner highly unbecoming her rank and her character." Lord Ellenborough appears, throughout the whole affair, to have taken infinite

madversions excited the deep resentment of her royal Highness and her friends, and were complained of in various publications and speeches, which asserted that the secret inquiry before the Commissioners had been carried on unfairly; that improper questions had been put, and that the evidence had not been correctly taken down. Without making any motion, or giving any notice, the noble and learned Lord rose in his place, and thus addressed his brother Peers:—

"My Lords, various considerations have at different moments operated upon my mind, to induce me to forbear the execution of a task which now, after the most mature and deliberate consideration, I am compelled to perform, as a duty that I owe to my own character and honor, as well as to the character and honor of those who were joined with me in a most important investigation. The first of these considerations was a consciousness of rectitude, I hope not presumptuously indulged, which made me backward in noticing the slanderous productions recently circulated against the conduct of individuals employed in situations of the highest trust. To have betrayed an anxious irritability of feeling, would have appeared to imply an acknowledgment of imperfection among those who have faithfully discharged an arduous and painful duty. There are cases where a sufficient vindication may be found in the candid judgment of mankind, where opportunities of forming an opinion not very erroneous are afforded to the public. Such, however, is not the situation of the individual who now addresses your Lordships. When the exculpation rests solely in the hands of the person accused, it becomes him, on the credit of the esteem and respect with which his assertion has been hitherto received, to employ that assertion, given in a manner the most solemn and impressive, for his own vindication."

After adverting to his reluctance to run any risk of making disclosures contrary to his oath as a Privy Councillor, and stating the issuing of the Commission, he thus proceeded:—

"In that Commission I found my name included; but

pains to get at the truth, and to have been actuated by a most earnest desire to do impartial justice to all parties.

the subject of inquiry, the intention to issue the Commission, and the Commission itself, were all profound secrets to me, until I was called upon to discharge the high duty that upon me was thus imposed. I felt that much was due to this command, and it was accompanied with some inward satisfaction that the integrity and zeal with which I had endeavored to discharge my public functions, had made a favorable impression upon the mind of my Sovereign; notwithstanding which, the mode in which this command was obeyed has been made the subject of the most unprincipled and abandoned slanders. It has been said that, after the testimony had been taken in a case where the most important interests were involved, the persons intrusted had thought fit to fabricate an unauthorized document, purporting to relate what was not given, and to suppress what was given in evidence. My Lords, I assert that the accusation is as false as hell in every part. What is there, let me ask, in the transactions of my past life—what is there in the general complexion of my conduct, since the commencement of my public career, that should induce any man to venture on an assertion so audacious? That it is destitute of all foundation, would, I trust, be believed even without my contradiction; but where it originated, or how it circulated, I know not. I will not trench on the decorum that ought to be observed in the proceedings of this House further than in such a case is necessary; but I will give the lie to such infamous falsehood, and I will, to the last hour of my existence, maintain the truth of that which I know to be founded on fact. It occurred to me, my Lords, that, in order to facilitate the proceedings, and at the same time to conduct them with the secrecy that was so important, it would be fit to select a person, in whom especial confidence might be reposed, for the purpose of recording the examinations, by taking down the evidence from the mouth of the witness in the most correct form. I thought that both the secrecy and accuracy required would be best consulted and secured by appointing an honorable and learned gentleman, who then held the office of Solicitor General, Sir Samuel Romilly. On every occasion when testimony was given, with only one exception, we had the benefit of his pres-

ence; but on that single occasion, whether it was that the commissioners found themselves at leisure to proceed, or whether they were unwilling that the witnesses should be called upon unnecessarily to attend again, I do not exactly remember; but it so happened that we determined to pursue our inquiries without his aid, for a messenger who had been despatched for Sir Samuel Romilly returned with information that he could not be found. It then occurred to my noble colleagues, and to myself, that we could take down the evidence ourselves, and, as I was in the particular habit of recording testimony (discharging, I believe, twice as much of that duty as any other individual in the kingdom), it was resolved that, on that evening, I should hold the pen. I complied; and I declare, and make the most solemn asseveration (which I should be happy, were it possible, to confirm and verify under the sacred sanction of an oath), that the examination that evening taken down by me, proceeded, in every part, from the mouth of the witness; that the testimony, at its termination, was read over to the witness; that the witness herself read and subscribed her name to the concluding sheet, as she had previously affixed her initials to that on which the evidence was commenced. Were I to advert to the terms in which that evidence was couched, I fear that I should be trenching upon the terms of the oath by which my duty is bound; but thus much I may say, upon the character of the paper (which I wish could be laid before the House without provoking a discussion, or leading to improper disclosures that I would not for a thousand reasons have promulgated), that, if it could be inspected, the strongest internal evidence would be found upon its face, to show that it was a genuine production, as taken from the mouth of the witness; if it could be consulted, many interlineations would be noticed, qualifying and altering the text according to the wish of the witness, and every individual reading it, with the application of common sense, would find that these alterations could only have been made at the time the person was under examination. I do not think that I bestow upon myself too great a share of praise, when I say that I may take credit to myself at least for accuracy in details of

this kind, and I will venture to maintain that there is not in the original document one word which was not uttered, approved and signed, after the most deliberate consideration, by the witness.

"My Lords, if I could be guilty of the negligence, or rather the wickedness imputed, are my noble colleagues and friends so negligent or so wicked as to connive at a crime of such unparalleled enormity? I am not aware that a syllable the witness wished to add was omitted, and I speak from the most perfect recollection and the most decided conviction when I say, that the minutes made by me contained the whole of the evidence, and nothing but the evidence, of the person then under examination. I am not in the habit of making complaints against publications; but if in any case it were necessary, it would be more peculiarly so in the present, where I am charged with a crime not only inconsistent with the functions of the high office I hold, but inconsistent with the integrity that, as a man, I should possess. Surely, for myself and my noble friends, I may be allowed to insist that we anxiously and faithfully discharged a public duty, and I hope, in the face of the House and of the country, we shall stand clear of this most base and miscreant imputation.

"I have heard it said, but the charge can only originate in the grossest stupidity, that we, as Commissioners, misbehaved ourselves in various respects. Folly, my Lords, has said, that in examining the witnesses we put leading questions. The accusation is ridiculous—it is almost too absurd to deserve notice. In the first place, admitting the fact, can it be objected to a Judge that he put leading questions? Can it be objected to persons in the situation of the Commissioners that they put leading questions? I have always understood, after some little experience, that the meaning of a leading question was this, and this only, that the Judge restrains an advocate who produces a witness on one particular side of a question, and who may be supposed to have a leaning to that side of the question, from putting such interrogatories as may operate as an instruction to that witness how he is to reply to favor the party for whom he is adduced. The counsel on the other side, however, may put what

questions he pleases, and frame them as best suits his purpose, because then the rule is changed, for there is no danger that the witness will be too complying. But even in a case where evidence is brought forward to support a particular fact, if the witness is obviously adverse to the party calling him, then again the rule does not prevail, and the most leading interrogatories are allowed. But to say that the Judge on the bench may not put what questions, and in what form he pleases, can only originate in that dullness and stupidity which is the curse of the age. Folly says again, that the testimony of the witness should have been recorded in question and answer. When, I ask, was it ever done? is there a single instance of the kind? will the most gray-headed judicial character in this country show a solitary example of the kind? It is impossible; and undoubtedly the most convenient mode was for the witness to see his evidence in one unbroken narrative, without the interruption of questions composed of words which he never employed —it is the language of the witness and not of the interrogator that is required. Such accusations are the offspring of a happy union of dullness and stupidity, aided by the most consummate impudence that was ever displayed.

"It would, I confess, be a great satisfaction to my mind and to those of my noble colleagues, if we had any means, without violating sacred and indispensable obligations, of attesting the truth of these facts; but the nature of the inquiry forbids it. We cannot produce the evidence itself; I dare not give the explanation that would set the matter for ever at rest; and in the situation I hold, and under all the circumstances, it is impossible that the Prince Regent should be addressed that the original document might be laid before the House.

"My Lords, this malignant and unfounded charge—this base and nefarious calumny—is one of the worst symptoms of the times in which we live. It shows an indifference in the public mind as to truth and falsehood; it originates in malice and is supported by ignorance: it is tossing firebrands in all directions, leaving those who are in danger from the flames to escape as well as they can, sometimes almost by a miracle. This, my

Lords, is one of the most hazardous attempts; it is a cruel attack upon those who are unable to defend themselves. We have struggled, but I hope not in vain, to defeat the nefarious and horrible design. I feel that it is impossible to give the accusation a more positive denial. I have declared that it is false from the commencement to the conclusion, and I shall sit down ashamed that it has been necessary for me to say anything: I feel almost ashamed that any vindication was required. I do not say that I am personally indifferent on a question of such undoubted magnitude; but if it regarded myself only, I could be well content to leave such degraded calumnies to their own refutation. I was called upon to discharge a public duty; that duty I assert I discharged faithfully; and that I took down the depositions fairly, fully, and honestly, I protest on my most solemn word and asseveration. I have spoken merely to vindicate myself and my colleagues. That vindication I trust is complete. We only wish to stand well in the opinion of our country as honest men who have faithfully discharged a great and painful duty; and let it be recollected that, having no means of resorting to proof, we are compelled to rest our exculpation on a flat, positive, and complete denial."[1]

All candid men believed that the investigation had been carried on with perfect fairness—but the violence of the noble and learned Lord's vindication was regretted, and many questioned the soundness of his positions as to the unlimited right of a Judge to put leading questions, and still more denied that in such an inquiry it was proper to give only the substance of the evidence of the witnesses, compounding questions and answers—instead of writing down the questions and the answers at full length, so as to obviate the possibility of misrepresentation or mistake.

For several sessions following, Lord Ellenborough took no part in debate upon any political subject, and confined his efforts in the House of Lords to a strenuous opposition to Bills for amending either the civil or criminal law, all which he denounced as Jacobinical and Revolutionary.

[1] 25 Parl. Deb. 207.

In 1816 he zealously supported the severe Alien Bill, which ministers still considered necessary after the return of peace; and, to show that at common law the King has a right by the royal prerogative to send all aliens out of the kingdom, he cited a petition of the merchants of London in the reign of Edward I., praying that monarch to do so. On a subsequent evening, Earl Grey ventured to question the bearing of this precedent, which, he said, had been brought forward in "the proud display of a noble and learned Lord."

Lord Ellenborough: "I rise, my Lords, to repel with indignation the base and calumnious imputation against me by the noble Earl, of having falsified a document, namely, the Petition of the City of London to Edward I. I hold in my hand a copy of that document, and its contents will show how unjustly I have been attacked."

Having read it in a loud and angry voice, he added in a very softened tone as he was about to resume his seat:—

"I thought it due, my Lords, to my own character to make this explanation, *and I trust that I have done it without any asperity of language.* [A loud laugh from both sides of the House.] That laugh awakens a sentiment in my mind which I will not express. All I shall say is, that a man who is capable of patiently enduring the imputation of having falsified a document is capable of that atrocity."[1]

Lord Ellenborough's last speech in the House of Lords was on the 12th of May, 1817, in opposition to Lord Grey's motion for a censure on Lord Sidmouth's circular letter, inviting all the magistrates of England to interfere for the purpose of putting down seditious publications, and telling them that it was their duty to imprison all the authors and vendors who could not give bail for their appearance at Quarter Sessions to answer indictments against them. Recollecting that he owed his promotion as Attorney General and as Chief Justice to the Home Secretary, who was now accused, and who was generally supposed to have been guilty of a great indiscretion, if not of an illegal stretch of authority, he redeemed the pledge he had given in these

[1] 34 Parl. Deb. 1069–1143.

words: "I am yours, and let the storm blow from what quarter of the hemisphere it may, you shall always find me at your side." The noble and learned Lord now delivered a very long and elaborate argument to prove that, by the common law of England, Justices of the Peace have power to hold to bail in cases of libel. This was answered by Lord Erskine, who insisted that the assumed power was an entire novelty and a dangerous usurpation. The Lords persuaded by the learning and eloquence of the Chief Justice, or blindly determined to support the Government, rejected the motion by a majuority of 75 to 19.[1]

After the permanent insanity of George III. and the establishment of the Regency, Lord Ellenborough was a member of the Queen's Council, to assist her in the custody and care of the King's person. In this capacity he had a daily report sent to him in a red box, which was handed up to him while on the bench, and he frequently attended meetings of the Council at Windsor. Having been absent from one of these, he received the following letter from Lord Eldon, which gives an interesting account of the afflicted monarch and his family during this calamity:—

"(*Confidential.*)

"MY DEAR LORD,

"The Archbishop being from town, I trouble you with a sketch of yesterday's proceedings at Windsor, your absence from which I greatly lamented, especially as the King wished to see you, and you would have been glad to see him.

"We had good and bad. Upon our arrival we received the daily account signed by all the doctors and Dundas. You must *see that*, it being by far the best account we have ever had. They state, I think, that no delusions had been betrayed for three days—Bott, the page, said none since Tuesday. They stated that, if the schemes and plans remained, they remained in a less degree than they had been before observed to exist; and they unanimously recommended that the King should have greater freedom and liberties, and more of communication with others than had been

[1] 36 Parl. Deb. 445–516.

allowed him—that this would try the solidity, and enable them to judge of the permanence of his improved state.

"I then desired them, by a written question, to *specify* in writing *what* they recommended, and not to leave us to judge of what was to be done under their *general* recommendation.

"They recommended—then in writing—unanimously:

"1. That Colonel Taylor should be with the King, his intercourse limited in degree, that is, as I understood it, by their prudence.

"2. That the King's chaplain should read the daily prayers in *his room*, not his chapel.

"3. That Lord Arden, Lord St. Helens, and others of that description, should visit and walk with him.

"4. That he should have his keys restored to him.

"Whilst they were consulting on these measures, the Dukes of York and Kent came to the Council, *as we believed*, by the Queen's desire, to represent that their walk had been very uncomfortable; that the King betrayed no delusion, but that he was very, very full of plans and schemes, much more so than he had lately been to the Duke of York, and that they were particularly alarmed at his conversation about having his keys. I should here tell you that the Queen sent for me immediately upon my arrival at Windsor, and, in a conversation I had with her Majesty and the Princess Augusta, expressed great apprehensions about the keys, both representing great improvement in the King. I found that this subject had been mentioned on *Wednesday* to the Council then at Windsor, and that the King had learnt that it was under their consideration. The Dukes also stated that the King's conversation was hurried, and did not admit of their saying one word. This was also delivered by the Dukes themselves to Dr. Halford, and afterwards to us, and by the Council it was all delivered in charge to all the physicians for their serious consideration.

"In the mean time, the Master of the Rolls and I went to the King, he having himself desired to see you and us. His manner to me was much kinder, and he had in the course of the week observed to Willis that he thought

me entitled to a belief on his part that I was right in what I had done, though he could not make it out how I could be so, and why I had not resigned the Seal. Willis had told him that I could not resign the Seal, that his Majesty was not well enough to accept it on resignation, and that the Prince, till he was Regent, could not have it offered to him, and that therefore it could not be resigned till the act his Majesty blamed on my part was done. He expressed surprise he had not adverted to this himself. The Queen or Princess Augusta had told me that he studiously called me Lord Eldon, and not Chancellor, or to that effect, and that he had told his family that when you and Grant and I were with him, he had been as reserved as he could towards me, and had avoided calling me Chancellor, but that he was in good humor again. Both Grant and I thought him so: his conversation was calm, quiet, connected, admitting of free conversation on our part, all the subjects good, the whole manner right. I think Grant will tell you we left the room sunk with grief that there could be anything wrong where all appeared so right. He said not a syllable, however, of himself, his situation, or his plans, and we understand it to be his determination not to make any request of any kind, of anybody, respecting himself. Upon our return at the end of three-quarters of an hour's visit, which concluded in a dignified bow upon Willis's coming in, and a kind speech towards me as Chancellor, we found that the doctors were ready with their written paper (which you must see), stating that *upon full consideration of all circumstances*, they still recommended the measures before mentioned, *including the restoration of the keys.*

"We were much puzzled, but we all agreed that we could not venture to control the doctors' unanimous and deliberate advice.

"We, therefore, in a written paper, advised the Queen to restore the keys;—in that paper stating (for her sake) that she had hitherto retained them under our advice; and in another paper we directed the physicians, if any improper use of the keys was attempted, to interpose to prevent it, and inform the Council of the occurrence. This was necessary, as the keys open presses

in which there are papers of consequence, and, it is understood, jewels of value. Taylor's attendance is to see that nobody sees any papers but the King, T. being acquainted with them all; and he has orders not to obey any orders either about papers, jewels, or other things. Willis and Bott expressed the utmost confidence that the King would do nothing wrong with the keys. Bott stated that he could not have answered for that a week ago, but all thought the recovery going on very rapidly.

"The prayers were to be said in the private room, because the physicians wished that the King should not yet go to the chapel, which is upstairs, as that step would lead him to think that he was to be up stairs as much as he wished. We desired that a particular account might be sent us to-day of the effect of all this, which you will receive in the course of circulation. I have detailed this as accurately as I can remember it, because it's natural *you* should know it, and because it tends to show, I think, that attendance at meetings becomes now of much importance. One of the doctors observed to the D. of M. that, in all this illness, much of improper communication as the King had made, he had never said a syllable upon state matters. This, I believe, was Baillie.

"In our papers of yesterday, which upon the Archbishop's return, you should see, we noticed your absence, as we did the Duke of Montrose's formerly, that, if we are blamable, it may be recorded that you are not so. I have communicated these matters to the Prince last night, who was very good-humored and reasonable upon them. "Yours, my dear Lord,

"ELDON."

When this letter was written Lord Eldon had not really been taken into favor by the regent, and, on the contrary, he expected to be speedily turned out of office. He therefore still clung with tenacity to the forlorn hope of the King's recovery, and he was exceedingly anxious to have Lord Ellenborough's co-operation in case there should appear to be any ground for restoring his Majesty to the throne. But the Regent soon after having for ever renounced "his early friends," Lord Eldon changed his tactics, and encouraged the belief

that the King was incurably mad. Lord Ellenborough appears to have refused always to join in any of these intrigues, and to have been only solicitous that the truth should be disclosed, and that justice should be done to the King, to the prince, and to the Nation.[1]

[1] See Lives of Chancellors, ch. 201.

CHAPTER LI

CONCLUSION OF THE LIFE OF LORD ELLENBOROUGH.

I HAVE now only to mention some criminal cases which arose before Lord Ellenborough in his later years. Of these the most remarkable was Lord Cochrane's, as this drew upon the Chief Justice a considerable degree of public obloquy, and causing very uneasy reflections in his own mind, was supposed to have hastened his end. In the whole of the proceedings connected with it he was no doubt actuated by an ardent desire to do what was right, but in some stages of it, his zeal to punish one whom he regarded as a splendid delinquent, carried him beyond the limits of mercy and of justice.

Lord Cochrane (since Earl of Dundonald) was one of the most gallant officers in the English navy, and had gained the most brilliant reputation in a succession of engagements against the French. Unfortunately for him, he likewise wished to distinguish himself in politics, and, taking the Radical line, he was returned to Parliament for the city of Westminster. He was a determined opponent of Lord Liverpool's administration, and at popular meetings was in the habit of delivering harangues of rather a seditious aspect, which induced Lord Ellenborough to believe that he seriously meant to abet rebellion, and that he was a dangerous character. But the gallant officer really was a loyal subject, as well as enthusiastically zealous for the glory of his country. He had an uncle named Cochrane, a merchant, and a very unprincipled man, who, towards the end of the war, in concert with De Berenger, a foreigner, wickedly devised a scheme by which they were to make an immense fortune by a speculation on the Stock Exchange. For this purpose they were to cause a sudden rise in the Funds,

by spreading false intelligence that a preliminary treaty of peace had actually been signed between England and France. Everything succeeded to their wishes; the intelligence was believed, the Funds rose, and they sold on time bargains many hundred thousand pounds of 3 per cents before the truth was discovered. It so happened that Lord Cochrane was then in London, was living in his uncle's house, and was much in his company, but there is now good reason to believe that he was not at all implicated in the nefarious scheme. However, when the fraud was detected,—partly from belief of his complicity, and partly from political spite, he was included in the indictment preferred for the conspiracy to defraud the Stock Exchange.

The trial coming on before Lord Ellenborough, the noble and learned Judge, being himself persuaded of the guilt of all the defendants, used his best endeavors that they should all be convicted. He refused to adjourn the trial at the close of the prosecutors' case, about nine in the evening, when the trial had lasted twelve hours, and the jury as well as the defendants' counsel were all completely exhausted, and all prayed for an adjournment. The following day, in summing up, prompted no doubt by the conclusion of his own mind, he laid special emphasis on every circumstance which might raise a suspicion against Lord Cochrane, and elaborately explained away whatever at first sight appeared favorable to the gallant officer. In consequence the jury found a verdict of GUILTY against all the defendants.

Next term Lord Cochrane presented himself in Court to move for a new trial, but the other defendants convicted along with him did not attend. He said truly that he had no power or influence to obtain their attendance, and urged that his application was founded on circumstances peculiar to his own case. But Lord Ellenborough would not hear him, because the other defendants were not present.[1] Such a rule had before been laid down, but it is palpably contrary to the first principles of justice, and it ought immediately to have been reversed.

[1] 3 Maule and Selwyn, 10, 67.

Lord Cochrane was thus deprived of all opportunity of showing that the verdict against him was wrong, and in addition to fine and imprisonment, he was sentenced to stand in the pillory. Although, as yet, he was generally believed to be guilty, the award of this degrading and infamous punishment upon a young nobleman, a member of the House of Commons, and a distinguished naval officer, raised universal sympathy in his favor. The Judge was proportionably blamed, not only by the vulgar, but by men of education, on both sides in politics, and he found, upon entering society, and appearing in the House of Lords, that he was looked upon coldly. Having now some misgivings himself as to the propriety of his conduct in this affair, he became very wretched. Nor was the agitation allowed to drop during the remainder of Lord Ellenborough's life: for Lord Cochrane, being expelled from the House of Commons, was immediately re-elected for Westminster: having escaped from the prison in which he was confined, under his sentence, he appeared in the House of Commons; in obedience to the public voice, the part of his sentence by which he was to stand in the pillory was remitted by the Crown; and a Bill was introduced into Parliament altogether to abolish the pillory as a punishment, on account of the manner in which the power of inflicting it had been recently abused. It was said that these matters preyed deeply on Lord Ellenborough's mind, and affected his health. Thenceforth he certainly seemed to have lost the gayety of heart for which he had formerly been remarkable.[1]

In Trinity Term, 1817, there came on, at the King's Bench bar, the memorable trial of Dr. James Watson for high treason, when the Chief Justice exerted himself greatly beyond his strength, having to contend with the eccentric exuberance of Sir Charles Wetherell, greatly piqued against the government, because, though a steady Tory, he had been passed over when he expected to have been appointed Solicitor General, and

[1] Many years afterwards, Lord Cochrane's case being reconsidered, he was restored to his rank in the navy, he was entrusted with an important naval command, and eulogies upon his services and upon his character were pronounced by Lord Brougham and other Peers.

with the luminous energy of Sergeant Copley, who on this occasion gained the reputation which in rapid succession made him, with universal applause, Chief Justice of Chester, Solicitor and Attorney General, Master of the Rolls, Lord Chancellor, and Baron Lyndhurst.[1] These two distinguished advocates, cordially concurring in the tender of their services, were assigned as counsel for the prisoner, and struggled with unsurpassed zeal in his defense. Conscientiously believing that the insurrection in which Watson had been engaged had been planned by him for the purpose of overturning the monarchy, the venerable Judge was honestly desirous of obtaining a conviction. But, *quantum mutatus ab illo*—he presented only a ghost-like resemblance of his former mighty self. When Sir Charles Wetherell described Castle, the accomplice, the principal witness for the Crown, as "an indescribable villain," and "a bawdy-house bully," the enfeebled Chief Justice exclaimed that "terms so peculiarly coarse might have been spared out of regard to the decorum to the Court," and he animadverted severely upon some of the gesticulations of the same irrepressible counsel, threatening to proceed to a painful act of authority if the offense were repeated; but the deep, impressive tones, and the heart-stirring thoughts, with which, from the bench, he used to create awe, and to carry along with him the sympathies of the audience, were gone; and, notwithstanding formidable proofs to make out a case of treason, an acquittal was early anticipated.

The trial having lasted seven long days, the Chief Justice was much exhausted, and in summing up he was obliged to ask Mr. Justice Bayley to read a considerable part of the evidence. His strength being recruited, he thus very unexceptionably concluded his charge:—

"You must now proceed to give that verdict which I trust you will give from the unbiassed impulse of honest and pure minds acting upon the subject before you, and which will have the effect of affording protection and immunity to the prisoner at the bar, if he shall

[1] Lord Castlereagh was sitting on the bench during the trial, and expressing great admiration of his Whig-Radical eloquence, is said to have added "I will set my *rat-trap* for him, baited with *Cheshire cheese*."

be found entitled to protection and immunity from the charges made against him; but, in another point of view, affording also that security to the laws and people of this land, and to its government as it subsists under those laws, and is administered by the King and the two Houses of Parliament; thus satisfying your own conscience, and the expectation of your country, unbiassed by any consideration which might affect the impartiality of that justice which you are, under so many solemn sanctions, this day required to administer. Gentlemen, you will consider of your verdict."

He then asked them whether they would take some refreshment before they left the bar, when the foreman, in a tone which made the Chief Justice's countenance visibly collapse, said, "My Lord, we shall not be long." Accordingly, after going through the form of withdrawing and consulting together, they returned and pronounced their verdict, to which they had long made up their minds, NOT GUILTY, and thereupon all the other prisoners who were to have been tried on the same evidence were at once acquitted and liberated.[1]

In the following autumn, Lord Ellenborough made a short tour on the Continent, in the hope of re-establishing his health. He at first rallied, from change of scene, but ere long unfavorable symptoms returned, and he seems to have had a serious foreboding that his earthly career was drawing to its close. A deep sense of religion had been instilled into his infant mind by his pious parents; this had never been obliterated, and now it proved his consolation and his support. While at Paris, he composed the following beautiful prayer, which may be used by all who wish, like him, with a grateful heart, to return thanks for the past bounties of Providence, and, looking forward, to express humble resignation to the Divine will:—

"O God, heavenly Father, by whose providence and goodness all things were made and have their being, and from whom all the blessings and comforts of this life, and all the hopes and expectations of happiness hereafter, are, through the merits of our blessed Saviour, derived to us, Thy sinful creatures, I humbly offer up my

[1] 32 St. Tr. 1–1074.

most grateful thanks and acknowledgments for Thy Divine goodness and protection, constantly vouchsafed to me through the whole course of my life, particularly indulging to me such faculties of mind and body, and such means of health and strength, as have hitherto enabled me to obtain and enjoy many great worldly comforts and advantages.

"Grant me, O Lord, I humbly beseech Thee, a due sense of these Thy manifold blessings, together with a steadfast disposition and purpose to use them for the benefit of my fellow-creatures, and Thy honor and glory. And grant, O Lord, that no decay or diminution of these faculties and means of happiness may excite in my mind any dissatisfied or desponding thoughts or feelings, but that I may always place my firm trust and confidence in Thy Divine goodness; and whether the blessings heretofore indulged to me shall be continued or cease, and whether Thou shalt give them or take them away, I may still, in humble obedience to Thy Divine will, submit myself in all things with patience and resignation to the dispensations of Thy Divine providence, humbly and gratefully blessing, praising, and magnifying Thy holy name for ever and ever. Amen

"Paris, 1817."

When Michaelmas Term returned he was able to take his seat in the Court of King's Bench, but he was frequently obliged to call in the assistance of the puisne judges to sit for him at nisi prius.

The trial of William Hone coming on at Guildhall, although there was a strong desire to convict him, for he had published very offensive pasquinades on George IV., the task of presiding was intrusted to Mr. Justice Abbott. The defendant was charged by three different informations with publishing three parodies, entitled "The late John Wilkes's Catechism," "The Political Litany," and "The Sinecurist's Creed." He was not at all supposed to be formidable, not being hitherto known as a demagogue; but in truth he defended himself with extraordinary skill and tact, and at the end of the first day's trial he obtained a verdict of acquittal amidst the shouts of the mob.

This being related to the enfeebled Chief Justice—his

energy was revived, and he swore that at whatever cost he would preside in Court next day himself, so that conviction might be certain, and the insulted law might be vindicated. Accordingly he appeared in Court pale and hollow-visaged, but with a spirit unbroken, and more stern than when his strength was unimpaired. As he took his place on the bench, "I am glad to see you, my Lord Ellenborough," shouted Hone; "I know what you are come here for; I know what you want." "I am come to do justice," retorted the noble and learned Lord; "my only wish is to see justice done." "Is it not rather, my Lord," said Hone, "to send a poor bookseller to rot in a dungeon?"

The subject of this day's prosecution was "The Political Litany," and the course taken by the defendant, with great effect, was to read a vast collection of similar parodies composed by writers of high celebrity, from Swift to Canning. Some of these exciting loud laughter in the crowd, the indignant Judge sent for the Sheriffs to preserve order, and confined them for their negligence. In summing up to the jury he reminded them that they were sworn on the Holy Evangelists and were bound to protect the ritual of our Church from profanation:—

"There are many things," said he, "in the parodies you have heard read which must be considered profane and impious, although divines and statesmen may be the authors of them; but this parody of the defendant transcends them all in profanity and impiety. I will deliver to you my solemn opinion, as *I am required by Act of Parliament to do;* under the authority of that Act, and still more in obedience to my conscience and my God, I pronounce it to be a MOST IMPIOUS AND PROFANE LIBEL. Hoping and believing that you are Christians, I doubt not that your opinion is the same."

The usual question being put when the jury, after a short deliberation, returned into Court—the Chief Justice had the mortification to hear the words NOT GUILTY pronounced, followed by a tremendous burst of applause, which he could not even attempt to quell.

But he was still undismayed, and declared that he would proceed next day with the indictment on "The Sinecurist's Creed." This was a most indiscreet resolution.

The whole of Hone's third trial was a triumph, the jury plainly intimating their determination to find a verdict in his favor. He read parallel parodies as on the preceding days, and at last came to one said to be written by Dr. Law, the late Bishop of Carlisle, the Judge's own father. *Lord Ellenborough* (in a broken voice): "Sir, for decency's sake forbear." Hone withdrew it, and gained more advantage by this tasteful courtesy than the parody could have brought him, had it been ever so apposite. After a similar summing up as on the preceding day, there was the like verdict, accompanied with still louder shouts of applause.

Bishop Turner, who was present at the trial, and accompanied the Chief Justice home in his carriage, related that all the way he laughed at the tumultuous mob who followed him, remarking that "he was afraid of their *saliva*, not of their *bite:*" and that passing Charing Cross he pulled the check-string, and said, "It just occurs to me that they sell the best red herrings at this shop of any in London; buy six." The popular opinion, however, was that Lord Ellenborough was killed by Hone's trial, and he certainly never held up his head in public after.

When the day again came round for the Judges to choose their Summer Circuits, he chose the Home, and appointed the days for holding the assizes at each place upon it; but as the time for his departure approached, his strength was unequal to the task, and he accepted the offer of LENS, a King's Sergeant, an excellent lawyer and an accomplished scholar (whom he greatly wished to have for his successor as Chief Justice), to go in in his stead. On this occasion he wrote the following letter to his trusty clerk, who had served him faithfully many years:—

"James's Square. July 1, 1818.

"DEAR SMITH,

"Mr. Sergeant Lens seems to prefer taking his own carriage and a pair of horses, with a pair to be put before them from his jobman, to having the use of my chariot, drivers, and horses which I offered him. John will attend him as circuit butler on a horse, with which I will provide him. You will attend to all things material

to the Sergeant's convenient accommodation, and see that they be fully supplied in all respects. The Sergeant as going in my place will, I presume, sit at each place on the circuit on the Civil side or the Crown side, as I shoud have done myself, viz., on the Civil side at Hertford, and on the Crown side at Chelmsford. You can apply to me if any matter of doubt should occur—which, however, I do not expect. I am going out of town to Roehampton.

"Yours, &c,,

"ELLENBOROUGH."

He afterwards took up his quarters at Worthing, on the coast of Sussex, in hopes of benefit from the sea air. While there he wrote the following letters to his anxious clerk, who had a sincere regard for his kind master, besides holding an office worth £2,000 a year on his master's life:—

"September 17th, 1818.

"DEAR SMITH,

"I think I am better, though but little, on my legs, and this fine weather gives me opportunity for beneficial exercise and exposure to the fresh air. Charles, who is with his family at Bognor, has been over to me here—as has Lushington from the same place. I shall be glad to see you when we are within distance of each other. Keep me properly apprised of your change of place from time to time, and believe me,

"Ever most sincerely,

"ELLENBOROUGH."

'October 1st, 1818.

"DEAR SMITH,

"I leave this place for Brighton for a month, on Saturday morning next. I have not gained much ground since I left town, and unless I make a progress which I do not expect, I shall not be able to look business in the face very soon. I am very lame in one of my legs from an erysipelas affection, which has settled there. I have likewise a troublesome cough, proceeding from the same cause. The Chief Justice of the Common Pleas,[1] is here, and better, upon the whole, than I expected to find him. He is, however, very weak in body, and can hardly sus-

[1] Sir Vicary Gibbs, who was then dying.

tain himself against any fatigue. I shall be glad to see you. Yours very sincerely,

"ELLENBOROUGH."

Before this he had found that all hope of returning to the discharge of his public duties must be renounced, and he had with firmness made up his mind to seek repose, that he might prepare for the awful day when he himself was to stand before the tribunal of an almighty, an omniscient, but merciful Judge.

The last stage of his judicial career has been thus graphically described:—

"Nature had exhibited evident symptoms of decay before his strenuous and ill-judged efforts on the trial of Hone; his frame had been shaken by violent attacks of gout, and during the Hilary and Easter terms of 1818 his absence from Court became more frequent, and his calls on the Puisne Judges for assistance in the sittings after term were often, though reluctantly, renewed. The fretfulness of his manner, and his irritable temperament, proved clearly the workings of disease when he occasionally reappeared in the submissive and silent hall, and the frequent interruptions of 'I will not recast the practice of the Court; I do not sit here as a pedagogue to hear first principles argued. What are the issues? What can you mean by wandering thus wildly from the record? I will not tolerate such aberration: I cannot engender or inoculate my mind with a doubt; I will not endure this industry of coughing;' attested his impatient anxiety, and fast-growing inability to sustain the toils of office. To the last he clung to his situation with adhesive grasp, and girded himself with a sort of desperate fidelity to perform its duties, at a time when, as he wrote to a friend, 'he could scarcely totter to his seat, and could only take notes *manu lassissimâ et corpore imbecillo.*' During the calm of the recess he deluded his spirits with the hope that he might resume his duties once more. The physicians recommended Bath, but his failing strength rendered the journey hazardous; and just before Michaelmas term commenced, tardily and with repining, he was compelled to announce to the Chancellor his inability to remain."[1]

[1] Townsend, vol. i. 389.

The following is his melancholy missive on this occasion:—

"Worthing, September 21, 1818.

"MY DEAR LORD,

"The decay of many of my faculties, particularly of my eyesight, which I have painfully experienced since the beginning of the present year, strongly admonishes me of the duty which I owe to the public and myself on that account; and as I have now held the office of Chief Justice of the Court of King's Bench for more than sixteen years, viz: from the 12th day of April, 1802, I am entitled, under the Acts of Parliament, to request, which I most humbly do, the permission of His Royal Highness the Prince Regent for leave to retire on the first day of next term, upon that amount of pension which by those Acts of Parliament His Royal Highness the Prince Regent is authorized to grant to a Chief Justice of the King's Bench retiring after a period of fifteen years' service. If I had been able to depend upon my strength for the due and satisfactory execution of my most important office for a longer period, I should not now have tendered my resignation to His Royal Higness."

The Chief Justice, without any servility, had always been a special favorite at Carlton House, and his proffered resignation drew forth the following graceful letter of condolence from the PRINCE REGENT:—

"MY DEAR LORD,

"I have only this moment been informed of your arrival in town, and I cannot suffer it to pass without conveying to you the heart-felt grief with which I received from the Chancellor a few days ago, his report of the melancholy necessity under which you have found yourself of tendering your resignation, and of your retiring from public life. As to my own private feelings on this most sad occasion, I will not attempt their expression; indeed, that would be quite impossible—but as a public man I do not hesitate most distinctly to state, that it is the heaviest calamity, above all in our present circumstances, that could have befallen the country. My Lord, your career, since the moment you took your seat, and presided in the high court committed to your

charge, can admit of but one sentiment, and but of one opinion; it has been glorious to yourself, and most beneficial to the nation. You have afforded an example combining wisdom with every other talent and virtue which exalt your character, and place it beyond all praise. With these sentiments, and such a picture before me, where can I hope to find, or where can I look for that individual who shall not leave a blank still in that great machine, of which you were the mainspring and brightest ornament? If, however, my dear friend, there can be consolation for us under such afflicting circumstances, that consolation is, that you carry with you into your retirement the veneration, gratitude, and admiration of the good, and the undoubted love and affection of those who have had the happiness of associating more intimately with you in private life. I confess that the magnitude of the loss we are about to sustain presses so heavily upon me, that I have not the power of adding more than that my constant and most fervent wishes for your health, comfort, and happiness will ever attend you, and that I remain always,

"My dear Lord,

"Your most sincere and affectionate friend,

"GEORGE P. R.

"Carlton House, October 18, 1818."

On the 6th day of November the Chief Justice went through the trying ceremony of executing his deed of resignation, which cost him a deeper pang than drawing his last breath. This world had now closed upon him, and before another opened, there was a dreary interval, in which, reduced to insignificance, he had the dread of suffering severe pain as well as cold neglect.

His family had flattered themselves that, when relieved from the anxiety of business, to which he was inadequate, he would rally, and that he might long be spared to enliven and comfort them; but the excitement of office being removed, he only sunk more rapidly.

Having ever been a firm believer of Christianity, he was now supported by a Christian's hope. In a short month after his resignation it was evident that his end was approaching, and having piously received the last

consolations of religion, he calmly expired at his house in St. James's Square in the evening of Sunday, the 13th of December, 1818. On the 22d of the same month his remains were interred in the cemetery of the Charter House, by the side of those of Mr. Sutton, its honored founder. The funeral was attended by all the dignitaries of the law and many distinguished men from other ranks of life, and its pomp was rendered more solemn by a dense fog, which only permitted to the eye a dim glimpse of the procession.[1]

On a tablet near the spot where his dust reposes, there is the following simple inscription to his memory:—

[1] From the family of his clerk, Mr. Smith, I have in my possession the originals of the two following letters, which I cannot refrain from copying, as they seem to me very creditable to all who are mentioned in them. They particularly show the subject of this memoir in a most amiable point of view, and proved that if at times he was regardless of giving pain to his equals, he must have been uniformly kind to dependents:

> "Lofty and sour to them that loved him not;
> But to those men who sought him, sweet as summer."

The first, announcing Lord Ellenborough's death to Mr. Smith, is from the Honorable Charles Law, his second son, and the other, inviting Mr. Smith to the funeral, is from the present Earl of Ellenborough:—

"Southampton Row, 8 o'clock.

"MY DEAR FRIEND,

"It has become my melancholy duty to announce to you the death of my beloved parent. He breathed his last about six o'clock, without a sigh and without a struggle. If you could call on me this evening, it would much oblige me.

"Yours, very sincerely and faithfully,
"CHAS. E. LAW."

"St. James's Square, Dec. 18, 1818.

"MY DEAR SIR,

"I am sure the long and intimate connection you had with my father, and the regard you naturally entertained for him, would make you desirous of joining his family in the performance of the last duties to his memory; and I am equally sure, from my knowledge of the gratitude my father felt for your very useful and faithful services, and of the esteem in which he held your character. that it would have been gratifying to him to think that his remains would be attended to the grave by you. Allow me, therefore, to request that you will proceed with us from this house on Tuesday morning before half-past seven.

"Very truly and faithfully yours,
"E.

"I have great pleasure in communicating to you that my late respected father has, in testimony of your long and most faithful services, bequeathed to you the watch and gold chain he usually wore, and a small sum for the purchase of some memorial of him."

In the Founder's vault are deposited the remains of
EDWARD LAW, LORD ELLENBOROUGH,
son of EDMUND LAW, LORD BISHOP of CARLISLE,
Chief Justice of the Court of King's Bench from April
1802 to November 1818,
and a Governor of the Charter-House.
He died December 13th, 1818, in the 69th year of his age;
and in grateful remembrance of
the advantages he had derived through life from his
Education
upon the Foundation of the Charter-House,
desired to be buried in this Church.

His character has been thus drawn by one who knew him well:—

"He was not a man of ambition; he had still less of vanity. He received with satisfaction certainly, but without the smallest excitement, the appointment of Attorney General, the Chief Justiceship, and the Peerage. I never knew any man, except the Duke of Wellington, who was so innately just. He thoroughly loved justice—strict justice, perhaps, but still justice. He was also thoroughly devoted to the performance of his duty. I have heard him say that no private consideration could absolve a man from the execution of public duty—that should the person dearest to him in the world die, he would go into court next day, if physically capable of doing so. When he took as his motto *compositum jus fasque animi*, he stamped his own character upon his shield."

Of Lord Ellenborough as a Judge little remains to be said. Nothwithstanding his defects, which were not small, it must be admitted that he filled his high office most creditably. He had an ascendency with his brethren, with the bar, and with the public, which none of his successors have obtained, and since his death his reputation has in no degree declined.[1] His bad temper and inclination to arrogance are forgotten, while men bear in willing recollection his unspotted integrity, his sound learning, his vigorous intellect, and his manly intrepidity in the discharge of his duty.

[1] The unenviable awe which he inspired into his brother Judges may be imagined from the following statement of Lord Brougham: "I remember being told by a learned Sergeant, that at the table of Sergeant's Inn, where the Judges met their brethren of the coif to dine, the etiquette was in those days never to say a word after the Chief Justice, nor even to begin any topic of conversation. He was treated with more than the obsequious deference shown at Court to the Sovereign himself."

As a legislator his fame depends upon the Act (Lord Ellenborough's Act, 43 Geo. III. c. 58) which goes by his name, the only one he ever introduced into parliament —by which ten new capital felonies were created, and the revolting severity of our criminal code was scandalously aggravated. Some of these, which before were only misdemeanors, might without impropriety have been made clergiable felonies, punishable with long imprisonment or transportation ; but punishing them with death raised a cry against capital punishment, even in cases of murder, where it is prompted by nature, sanctioned by religion, and necessary for the security of mankind. However, Lord Ellenborough, with many of his contemporaries, thought that the criminal code could not be too severe. He strenously opposed all the efforts of Sir Samuel Romilly in the cause of humanity, and was as much shocked by a proposal to repeal the punishment of death for stealing to the value of five shillings in a shop, as if it had been to abrogate the Ten Commandments :—

"I trust," said he, "your Lordships will pause before you assent to a measure pregnant with danger to the security of property, and before you repeal a statute which has been so long held necessary for public security, and which I am not conscious has produced the smallest injury to the merciful administration of justice. After all that has been stated in favor of this speculative humanity, it must be admitted that the law as it stands is but seldom carried into execution, and yet it ceases not to hold out that terror, which alone will be sufficient to prevent the frequent commission of the offense. It has been urged by persons speculating in modern legislation, that a certainty of punishment is preferable to severity—that it should invariably be proportioned to the magnitude of the crime, thereby forming a known scale of punishments commensurate with the degree of offense. Whatever may be my opinion of the theory of this doctrine, I am convinced of its absurdity in practice. . . . . Retaining the terror, and leaving the execution uncertain and dependent on circumstances which may aggravate or mitigate the enormity of the crime, does not prove the

severity of any criminal law; whereas to remove that salutary dread of punishment would produce injury to the criminal, and break down the barrier which prevents the frequent commission of crime. The learned Judges are *unanimously agreed* that the expediency of justice and the public security require there should not be a remission of capital punishment in this part of the criminal law. My Lords, if we suffer this bill to pass, we shall not know where to stand—we shall not know whether we are on our heads or on our feet. If you repeal the Act which inflicts the penalty of death for stealing to the value of five shillings in a shop, you will be called upon next year to repeal a law which prescribes the penalty of death for stealing five shillings in a dwelling-house, there being no person therein—a law, your Lordships must know, on the severity of which, and the application of it, stands the security of every poor cottager who goes out to his daily labor. He, my Lords, can leave no one behind to watch his little dwelling and preserve it from the attacks of lawless plunderers; confident in the protection of the laws of the land, he cheerfully pursues his daily labors, trusting that on his return he shall find all his property safe and unmolested. Repeal this law, and see the contrast: no man can trust himself for an hour out of doors without the most alarming apprehensions that on his return every vestige of his property will be swept away by the hardened robber. My Lords, painful as is the duty—anxious as the feelings of a Judge are—unwilling as he is to inflict the tremendous penalties of the law—there are cases where mercy and humanity to the few would be injustice and cruelty to the many. There are cases where the law must be applied in all its terrors. *My Lords, I think this, above all others, is a law on which so much of the security of mankind depends in its execution, that I should deem myself neglectful of my duty to the public if I failed to let the law take its course.*"

The Chief Justice scoffed "at that speculative and modern philosophy which would overturn the laws that a century had proved to be necessary—on the illusory opinions of speculatists."

"I implore you," he said, in one of his latest ad-

dresses to the Lords, "not to take away the only security the honest and industrious have against the outrages of vice and the licentiousness of dishonesty. There is a dangerous spirit of innovation abroad on this subject, but against which I ever have been, and always shall be, a steady opposer. I seek no praise—I want no popular applause; all I wish is, that the world may esteem me as a man who will not sacrifice one iota of his duty for the sake of public opinion. My Lords, I shall never shrink from the fulfillment of the most arduous task from fear of popular prejudice."

The degree to which Lord Ellenborough's powerful mind was perverted by early prejudice, may be seen from the following entry in the Diary of Sir Samuel Romilly:—

"Lord Lauderdale told me that soon after my pamphlet appeared, in 1810, he had some conversation about it with Ellenborough, who told him, that though the instances were very rare, yet it sometimes became necessary to execute the law against privately stealing in shops, and that he had himself left a man for execution at Worcester for that offense. The man had, he said, when he came to the bar, lolled out his tongue and acted the part of an idiot; that he saw the prisoner was counterfeiting idiocy, and bade him be on his guard; that the man, however, still went on in the same way; whereupon Lord Ellenborough, having put it to the jury to say whether the prisoner was really of weak mind, and they having found that he was not, and having convicted him, left him for execution. Upon which Lord Lauderdale asked the Chief Justice what law there was which punished with death the counterfeiting idiocy in a court of justice; and told him that he thought his story was a stronger illustration of my doctrine than any of the instances which I had mentioned."

Lord Ellenborough was equally opposed to every improvement in the law of Debtor and Creditor, and prophesied the utter ruin of commercial credit and the subversion of the empire if the invaluable right of arresting on mesne process should ever be taken away, or the fatal principle of *cessio bonorum* should ever be recognized in this country, so as that an honest insolvent

might be entitled to be discharged out of prison on yielding up the whole of his property to his creditors.[1]

I may perhaps feel some little pride in beholding England, after the passing of bills, which I had the honor to introduce into Parliament, to take away "the invaluable right," and to establish "the fatal principle"—more wealthy and more prosperous than she ever was before.

Lord Ellenborough had seen very little of foreign countries, and was rather intolerant of what he considered un-English. While in Paris, he went to attend a criminal trial in the Cour d'Assizes, but when the interrogatory of the prisoner began, he made off, saying it was contrary to the first principles of justice to call upon the accused to criminate himself. He saw still stronger reason to be disgusted with their civil procedure. He had hired a carriage by the day, with a coachman, from the *remise*. On one of the *quais* the coachman, by furious driving, willfully damaged some crockery-ware exposed to sale by an old woman. She screamed; a *sergent de ville* came up, the carriage was stopped, and Milord Anglaise was called upon to pay a large sum of money by way of *amende*. He denied his liability, and insisted that, according to the doctrine of Macmanus *v.* Cricket, 1 East, 106, the only remedy was against the coachman himself, or against the keeper of the *remise;* but he was cast, and had to pay damages and costs.

The Chief Justice deserves great credit for the exercise of his influence in the appointment of puisne Judges. Lord Chancellor Eldon was in the habit of consulting him on this subject, and of being guided by his advice. Free from all petty jealousy, he chose for his colleagues Bayley, Dampierre, Holroyd, and Abbot.[2]

He never appeared before the world as an author, and, from the want of attention to English composition which prevails at English seminaries, he was signally unskillful in it. In his written judgments, as they appear in the law reports, he betrays an utter disregard of *rhythm*, and

[1] 19 Parl. Deb. 1169–1172; 29 Parl. Deb. 229, 606–7.

[2] I have had the opportunity of reading the letters between Lord Eldon and Lord Ellenborough about the appointment of Judges; but such correspondence ought to remain for ever "secret and confidential."

his hereditary love of *parenthesis* is constantly breaking out.[1]

It was in sarcastic effusions from the bench, and in jocular quips, when mixing in society on equal terms with his companions, that he acquired his most brilliant renown. Westminster Hall used to abound with his *facetiæ*, and some of them (perhaps not the best) are still *cited*.

A young counsel who had the reputation of being a very impudent fellow, but whose memory failed him when beginning to recite a long speech which he had prepared, having uttered these words—"The *unfortunate client* who appears by me—the *unfortunate client* who appears by me—My Lord, my *unfortunate client*"—the Chief Justice interposed, and almost whispered in a soft and encouraging tone—"You may go on, Sir—so far the Court is with you."

Mr. Preston, the famous conveyancer, who boasted that he had answered 50,000 cases, and drawn deeds which would go round the globe, if not sufficient to cover the whole of its surface, having come special from the Court of Chancery to the King's Bench to argue a case on the construction of a will, assumed that the Judges whom he addressed were ignorant of the first principles of real property, and thus began his erudite harangue—"An estate in *fee simple*, my Lords, is the highest estate known to the law of England." "Stay, stay," said the Chief Justice, with consummate gravity, "let me take that down." He wrote and read slowly and emphatically, "An estate—in fee simple—is—the highest estate—known to—the law of England;" adding, "Sir, the Court is much indebted to you for the information."[2] There was only one person present who

[1] It is related of his father, the Bishop of Carlisle, that in passing a work through the press, the proof-sheets, which were promised to be sent regularly, soon stopped, and that going to the printing office to remonstrate, the *Devil* said to him, "Please you, my Lord, your Lordship's MS. has already used up all our parentheses, but we have sent to the letter founder's for a ton extra, which we expect to be sent in next week."

[2] Chief Justice Gibbs once told me this anecdote of Sergeant Vaughan, who, although a popular advocate and afterwards made a Judge, was utterly ignorant of the rudiments of the law of real property, and terribly alarmed lest he should commit some absurd blunder. "He was arguing a real property case before me, of which he knew no more than the usher, and

did not perceive the irony. That person having not yet exhausted the Year Books, when the shades of evening were closing upon him, applied to know when it would *be their Lordships' pleasure* to hear the remainder of his argument? *Lord Ellenborough:* "Mr. Preston, we are bound to hear you out, and I hope we shall do so on Friday—but, alas! pleasure has been long out of the question."

Another tiresome conveyancer having towards the end of Easter Term occupied the Court a whole day about the *merger of a term*, the Chief Justice said to him, "I am afraid, Sir, the TERM, although a long one, will *merge* in your argument."

James Allan Park, who had the character of being very sanctimonious, having in a trumpery cause affected great solemnity, and said several times in addressing the Jury, "I call Heaven to witness—as God is my Judge," &c.—at last Lord Ellenborough burst out—"Sir, I cannot allow the law to be thus violated in open Court. I must proceed to fine you for profane swearing—five shillings an oath." The learned counsel, whose risibility was always excited by the jokes of a Chief Justice, is said to have joined in the laugh created by this pleasantry.

Mr. Caldecot, a great Sessions lawyer, but known as a dreadful *bore*, was arguing a question upon the ratability of certain lime quarries to the relief of the poor, and contended at enormous length that, "like lead and copper mines, they were not ratable, because the limestone in them could only be reached by deep *boring*, which was matter of science." *Lord Ellenborough, C. J.:* "You will hardly succeed in convincing us, Sir, that every species of *boring* is '*matter of science*.'"

he laid down Preston's proposition that 'an estate in fee simple is the highest estate known to the law of England.' I, wishing to frighten him, pretended to start, and said, 'What is your proposition, brother Vaughan?' when, thinking he was quite wrong and wishing to get out of the scrape, he observed, 'My Lord, I mean to contend that an estate in fee simple is *one of* the highest estates known to the law of England—that is, my Lord, that it may be under certain circumstances—and sometimes is so.'" But the learned Sergeant had good qualities, which rendered him very popular—although when he was promoted to the Bench by the interest of his brother Sir Henry Halford, physician to George IV., it was said by the wags that he had a better title than any of his brethren, being a Judge *by prescription.*

A declamatory speaker (Randle Jackson, counsel for the E. I. Company), who despised all technicalities, and tried to storm the Court by the force of eloquence, was once, when uttering these words, "In the book of nature, my Lords, it is written"—stopped by this question from the Chief Justice, "Will you have the goodness to mention the *page*, Sir, if you please?"

A qestion arose, whether, upon the true construction of certain tax acts, *mourning coaches* attending a funeral were subject to the post-horse duty? Mr. Gaselee, the counsel for the defendant, generally considered a dry special pleader, aiming for once at eloquence and pathos, observed—"My Lords, it never could have been the intention of a Christian legislature to aggravate the grief felt by us in following to the grave the remains of our dearest relatives, by likewise imposing upon us the payment of the post-horse duty." *Lord Ellenborough, C. J.:* "Mr. Gaselee, may there not be some danger in sailing up these high sentimental latitudes?"

A very doubtful *nisi prius* decision being cited before him, he asked, "Who ruled that?" Being answered "The Chief Justice of the Isle of Ely"—he replied—"Cite to me the decisions of the Judges of the land—not of the Chief Justice of the Isle of Ely"—adding in a stage whisper, "who is only fit to *rule*—a copybook."[1]

A Quaker coming into the witness box at Guildhall without a broad brim or dittoes, and rather smartly dressed, the crier put the book into his hand and was about to administer the oath, when he required to be examined on his *affirmation*. Lord Ellenborough, asking if he was really a Quaker, and being answered in the affirmative, exclaimed, "Do you really mean to impose upon the Court by appearing here in the disguise of a reasonable being?"

A witness dressed in a fantastical manner having given very rambling and discreditable evidence, was asked in cross-examination, "What he was?" *Witness:* "I employ myself as a surgeon." *Lord Ellenborough, C. J.:* "But does any one else *employ you as a surgeon?*"

A volunteer corps of Westminster shopkeepers, while exercising in Tothill Fields, being overtaken by a violent

[1] This was Christian, a far-away cousin of Lord Ellenborough.

storm of wind and rain, took shelter in Westminster Hall, while he was presiding in the adjoining Court of King's Bench. *Lord Ellenborough, C. J.:* "Usher, what is the meaning of that disturbance?" *Usher:* "My Lord, it is a volunteer regiment *exercising*, your Lordship." *Lord Ellenborough, C. J.:* "*Exercising!* We will see who is best at that. Go, Sir, to the Regiment, and inform it, that if it depart not instantly I will commit it to the custody of a tipstaff." The noble and learned Lord seems to have forgotten his own military enthusiasm when he exercised in the awkward squad of the "DEVIL'S OWN."

At a Cabinet dinner of "All the Talents" Lord —— being absent, and some one observing that he was seriously ill, and like to die: "Die!" said Lord Ellenborough—"why should he die? What would he *get* by that?"

Henry Hunt, the famous demagogue, having been brought up to receive sentence upon a conviction for a seditious meeting, began his address in mitigation of punishment, by complaining of certain persons who had accused him of "stirring up the people by *dangerous eloquence*." *Lord Ellenborough, C. J.* (in a very mild tone): "My impartiality as a Judge calls upon me to say, Sir, that in accusing you of that they do you great injustice."

The following dialogue between the same Chief Justice and the same demagogue we have on the authority of Mr. Justice Talfourd, who was present at it:

"Lord Ellenborough had come down after an interval, during which his substitutes had made slow progress, and was rushing through the list like a rhinoceros through a sugar plantation, or a Common Sergeant in the evening through a paper of small larcenies; but just as he had non-suited the plaintiff in the twenty-second cause, which the plaintiff's attorney had thought safe till the end of the week, and was about to retire to his turtle, with the conviction of having done a very good morning's work, an undeniable voice exclaimed, 'My Lord! and Mr. Hunt was seen on the floor with his peculiar air—perplexed between that of a bully and a martyr. The Bar stood aghast at his presumption; the usher's wands trembled in their hands; and the re-

porters, who were retiring after a very long day, during which, though some few City firms had been crushed into bankruptcy, and some few hearts broken by the results of the causes, they could honestly describe as 'affording nothing of the slightest interest except to the parties,' rushed back and seized their note-books to catch any word of that variety of rubbish which is of 'public interest.' My Lord paused and looked thunders, but spoke none. 'I am here, my Lord, on the part of the boy Dogood,' proceeded the undaunted Quixote. His Lordship cast a moment's glance on the printed list, and quietly said, 'Mr. Hunt, I see no name of any boy Dogood in the paper of causes,' and turned towards the door of his room. 'My Lord!' vociferated the orator, 'am I to have no redress for an unfortunate youth? I thought your Lordship was sitting for the redress of injuries in a court of justice.'—'O no, Mr. Hunt,' still calmly responded the Judge—'I am sitting at Nisi Prius; and I have no right to redress any injuries, except those which may be brought before the jury and me, in the causes appointed for trial.'—'My Lord,' then said Mr. Hunt, somewhat subdued by the unexpected amenity of the Judge, 'I only desire to protest.'—'Oh, is that all?' said Lord Ellenborough: 'by all means protest, and go about your business!' So Mr. Hunt protested and went about his business; and my Lord went unruffled to his dinner, and both parties were content."[1]

While the Lord Darnley, against whom Lord Ellenborough had a special spite, was making a tiresome speech in the House of Lords, he rose up and said, with that quaint and dry humor which rarely suffered his own muscles to relax, but loud enough to be heard by three-fourths of the peers present, "I am answerable to God for my time, and what account can I give at the day of judgment if I stay here any longer?"

A very tedious Bishop having yawned during his own speech, Lord Ellenborough exclaimed, "Come, come, the fellow shows some symptoms of taste, but this is encroaching on our province."

Of Michael Angelo Taylor, who, though very short of stature, was well knit, and thought himself *a very*

[1] Talfourd's "Vacation Rambles.'

great man—Lord Ellenborough said, "his father, the sculptor, had fashioned him for *a pocket Hercules*."

At the coming in of the "TALENTS" in 1806, Erskine himself pressed the Great Seal upon Lord Ellenborough, saying that "he would add to the splendor of his reputation as Lord Chancellor." Ellenborough knowing that, on his own refusal, Erskine was to be the man, exclaimed, "How can you ask me to accept the office of Lord Chancellor when I know as little of its duties as you do?" [1]

Being told that the undertaker had made a foolish mistake in the hatchment put up on Lord Kenyon's house after the death of that frugal Chief Justice, MORS JANUA VITA, his successor exclaimed "No mistake at all, Sir—there is no mistake—it was by particular directions of the deceased in his will—it saved the expense of a diphthong!"

From these sayings it might be thought that he was uniformly cynical and even acrimonious, but he spoke rather from a love of fun than from any malignity, and he had in him a large stock of good humor and *bonhomie*, which, producing little epigrammatic point, is in danger of being forgotten. He was an extremely agreeable companion. "The pungency of his wit," said an old class-fellow, "his broad, odd, sometimes grotesque jokes, his hearty merriment, which he seemed to enjoy, rather by a quaint look and indescribable manner than by any audible laughing, altogether formed a most lively and delightful person, whether to hear or see."

In domestic life Lord Ellenborough was exceedingly amiable, though on rare occasions a little hasty. It was reported that Lady Ellenborough, by doing what all ladies then considered very innocent, trying to smuggle some lace, caused the family coach to be seized as forfeited, and that he calmly said, "We have only to pay the penalty." But if Rogers is to be believed, he did not show such equanimity when he thought that a bandbox had been improperly put into the carriage by her Ladyship. The author of the *Pleasures of Memory* used often to relate the following anecdote:—

"Lord Ellenborough was once about to go on the cir-

[1] *Ex relatione* the present Earl of Ellenbough.

cuit, when Lady Ellenborough said that she should like to accompany him. He replied that he had no objection, provided she did not incumber the carriage with bandboxes, which were his utter abhorrence. During the first day's journey, Lord Ellenborough, happening to stretch his legs, struck his foot against something below the seat. He discovered that it was a bandbox. Up went the window and out went the bandbox. The coachman stopped, and the footman, thinking that the bandbox had tumbled out of the window by some extraordinary chance, was going to pick it up, when Lord Ellenborough furiously called out, 'Drive on!' The bandbox, accordingly, was left by the ditch side. Having reached the county-town where he was to officiate as Judge, Lord Ellenborough proceeded to array himself for his appearance in the Court House. 'Now,' said he, 'where is my wig—where *is* my wig?' 'My Lord,' replied his attendant, 'it was thrown out of the carriage window.'"[1]

Lord Ellenborough was above the middle size, and sinewy, but his figure was ungainly, and his walk singularly awkward. He moved with a sort of semi-rotatory step, and his path to the place to which he wished to go was the section of a parabola. When he entered the court, he was in the habit of swelling out his cheeks by blowing and compressing his lips, and you would have supposed that he was going to snort like a war horse preparing for battle. His spoken diction, although always scholar-like, rather inclined to the sesquipedalian; his intonation was deep and solemn, and certain words he continued, through life, to pronounce in the fashion he had learned from his Cumbrian nurse. These peculiarities, which were of course well known to the public, made him a favorite subject for mimicry. Charles Mathews, the celebrated comedian, who had unrivaled felicity of execution in this line, to the infinite delight of a crowded theater, brought the Lord Chief Justice on the stage, in the farce of LOVE, LAW, AND PHYSIC. His Lordship did not appear as one of the *Dramatis Personæ*, but *Flexible*, the Barrister (personated by Mathews), in giving an account of a trial in which he had been counsel,

[1] Table Talk of Samuel Rogers, p. 197.

having very successfully taken off Erskine and Garrow, when he came to the summing up, in look, gesture, language, tone, and accent, so admirably represented the Lord Chief Justice of the King's Bench that the audience, really believing that they were in the presence of the venerable judge, remained in deep and reverential silence till he had concluded, and then, after many rounds of applause, made him give the charge three times over. Mrs. Mathews, in her entertaining 'Memoirs of her Husband,' says, "When he came to the Judge's summing up, the effect was quite astounding to him, for he had no idea of its being so received. The shout of recognition and enjoyment, indeed, was so alarming to his nerves, so unlike all former receptions of such efforts, that he repented the attempt in proportion as it was well taken, and a call for it a second time fairly upset him, albeit not unused to loud applause and approbation." The Lord Chief Justice was exceedingly shocked to find all the papers next morning filled with comments on his charge in the famous case of *Litigant* v. *Camphor*, and in a fury he wrote to the Lord Chamberlain, requiring his interposition, and observing that, since the 'Cloud of Aristophanes,' in which Socrates was ridiculed, there had not been such an outrage on public decency. The Lord Chamberlain appears immediately to have effected his object, in a private audience with Mathews, by a courteous representation, without even a hint of authoritative proceedings. According to Mr. Mathews, "his Lordship was soon satisfied that he had no occasion to use any argument to influence the performer, for Mr. Mathews proved to him at once that he had fully resolved, from the moment he found his imitation received with such extraordinary vehemence, not to repeat it." Nothwithstanding urgent and vociferous requests and complaints of the audience at subsequent representations of LOVE, LAW, AND PHYSIC, the Judge's charge was heard no more in public. But soon afterwards, Mathews received an invitation from the Prince Regent to Carlton House, and in the course of the evening, H. R. H. began to speak of the extraordinary sensation caused by *Flexible's* recent imitation, addding that he would have given the world to have been present. Mathews well understood

the royal hint, but was much embarrassed, for, glancing his eye round, it fell upon the Lord Chamberlain, who was looking particularly grave. The Prince, observing Mathews' hesitation, said, "Oh, don't be afraid; we're all *tiled* here. Come, pray oblige me. I'm something of a mimic myself. My brother here (turning to the Duke of York) can tell you that my Chancellor Thurlow is very tolerable, only that I do not like to swear up to the mark. It was not so well that you should produce Chief Justice Ellenborough on the public stage, but here you need have no scruples." "The Prince was in raptures," says Mrs. Mathews, "and declared himself astonished at the closeness of the imitation, shutting his eyes, while he listened to it with excessive enjoyment, and many exclamations of wonder and delight, such as *Excellent! Perfect! It is himself!* The Duke of York manifested his approval by peals of laughter, and the Princes afterwards conversed most kindly and agreeably on the subject with my husband and the high personages present."

Posterity may have a favorable and correct notion of Lord Chief Justice Ellenborough, from a portrait of him by Sir Thomas Lawrence, in his judicial robes, which, covering his awkward limbs, represents a striking likeness of him, and yet makes him appear dignified by portraying his broad and commanding forehead, his projectlng eyebrows, dark and shaggy, his stern black eye, and the deep lines of thought which marked his countenance.

He lived in a handsome style suitable to his station and the splendid emoluments which then belonged to the Chief Justiceship of the King's Bench. At first these did not exceed £8,000 a year, but on the death of Mr. Way, appointed by Lord Mansfield, the great office of Chief Clerk of the King's Bench fell in, which formed a noble provision for him and his family.[1] Soon after he was made Chief Justice he left Bloomsbury Square for a magnificent house in St. James's Square. To give an idea of its size to an old lawyer who lived in Chancery Lane, and to whom he was describing it, he said, "Sir, if you let off a piece of ordnance in the hall,

[1] It is said that he heard of Way's death while he was riding in Hyde Park, and he immediately dismounted at a house in Knightsbridge and executed a deed, filling up the office, lest he should die before appointing to it

the report is not heard in the bed rooms."[1] He likewise bought a beautiful villa at Roehampton, which might almost rival Lord Mansfield's at Caen Wood. Nevertheless from fees and offices the profits of which he was entitled to turn to his own use, he left above £240,000 to his family besides the office of Chief Clerk of the King's Bench, commuted to his son for £7,000 a year during life.

Five sons and five daughters survived him. He bequeathed £2,000 a year to his widow, and £15,000 to each of his younger children. The eldest, to whom the residue and the great office fell, is the present Earl of Ellenborough, one of the most distinguished statesmen of the nineteenth century,—who, by his eloquence and his administrative powers, has added fresh splendor to the name which he bears.

Charles, the second son, having risen by his own merit to be Recorder of London, and Member of Parliament for the University of Cambridge, died at an early age.

I have great pleasure in concluding this Memoir of Lord Chief Justice Ellenborough with a few artless but sweet and affecting lines from a Monody on his death, written by his favorite daughter ELIZABETH,—then a little girl in the school-room,—now the LADY COLCHESTER:

"Ye who have mourned o'er life's departing breath,
And view'd the sad and solemn scene of death,
Whilst hanging still o'er him whose soul is fled,
Have ye not felt the awful silent dread,
Which strikes the soul as we in vain deplore
His loss, whose presence ne'er can cheer us more!
Those eyes are closed, whose fond approving glance
Could once the bliss of each gay joy enhance;
Those lips are seal'd—where truth for ever reign'd,
Where wisdom dwelt, and piety unfeign'd!
* * * *
Such was the father whom we now bewail,
But what can tears or poignant grief avail?
Can they recall him to this earth again?
False, flattering hope! ah! wherefore art thou vain?
* * * *
Rais'd above earth and ev'ry earth-born care,
For Heaven's eternal joys our souls prepare.
Till ev'ry feeling, taught on high to soar,
Our hearts shall taste of bliss unknown before.

'*St. James's Square, Dec.* 1818."

[1] This was the first instance of a common law Judge moving to the "West End." Hitherto all the common law Judges had lived within a radius of half a mile from Lincoln's Inn; but now they are spread over the Regent's Park, Hyde Park Gardens, and Kensington Gore.

CHAPTER LII

LIFE OF LORD TENTERDEN FROM HIS BIRTH TILL HIS ELEVATION TO THE BENCH.

THE subject of this memoir seems to offer an unpromising task to the biographer. Lord Tenterden was of very obscure origin; scarcely an anecdote remains of his schoolboy days; his university career, though highly creditable, was not marked by any extraordinary incidents; while at the bar he was more distinguished for labor than brilliancy; he did not even attain the easy honor of a silk gown; till raised to the Bench he never held any office more distinguished than that of "Devil to the Attorney General;" he neither was, nor wished to be, a member of the House of Commons; when made a puisne Judge he was believed to have reached the summit of his ambition; afterwards unexpectedly placed in the House of Lords, his few speeches there were distinguished for flatness or absurdity; he was dull in private life as well as in public; and neither crimes nor follies could ever be imputed to him. Yet is his career most instructive, and by a writer who does not depend upon wonder-stirring vicissitudes, it might be made most interesting. The scrubby little boy who ran after his father, carrying for him a pewter basin, a case of razors and a hairpowder bag, through the streets of Canterbury, became Chief Justice of England, was installed among the Peers of the United Kingdom, attended by the whole profession of the law, proud of him as their leader; and when the names of orators and statesmen illustrious in their day have perished with their frothy declamations, Lord Tenterden will be respected as a great magistrate, and his judgments will be studied and admired.

Although there be something exciting to ridicule in the manipulations of barbers—according both to works

of fiction and to the experience of life, there is no trade which furnishes such striking examples of ready wit, of entertaining information, and of agreeable manners.[1] This superiority of barbers may have at first arisen from their combination of bleeding and bone-setting with shaving and haircutting—but since they ceased to act as surgeons it can only be accounted for by their being admitted to familiar intercourse with their customers in higher station, whom they daily visit—and by the barber's shop being the grand emporium for the circulation of news and scandal.

At the corner of a narrow street, opposite to the stately western portal of the Cathedral of Canterbury, stood a small house, presenting in front of it a long pole, painted of several colors,—with blocks in the window, some covered with wigs, and some naked,—a sign over the door, bearing the words "ABBOTT, HAIRDRESSER,"—and on the sides of the door "Shave for a penny—hair cut for two pence, and fashionably dressed on reasonable terms." This shop was kept by a very decent, well-behaved man, much respected in his neighborhood,—who had the honor to trim the whole Chapter and to cauliflower their wigs as they were successively in residence,—and who boasted that he had thrice prepared his Grace the Archbishop for his triennial charge to the clergy of the diocese. But he was not the pert, garrulous, bustling character which novelists who introduce heroes of the razor and scissors love to portray. He was depicted by one who had known him well for many

[1] One of the most intimate friends I have ever had in the world was Dick Danby, who kept a hairdresser's shop under the Cloisters in the Inner Temple. I first made his acquaintance from his assisting me, when a student at law, to engage a set of chambers; he afterwards cut my hair, made my bar wigs, and assisted me at all times with his valuable advice. He was on the same good terms with most of my forensic contemporaries. Thus he became master of all the news of the profession; and he could tell who were getting on and who were without a brief—who succeeded by their talents and who hugged the attorneys—who were desirous of becoming puisne judges and who meant to try their fortune in Parliament—which of the Chiefs was in a failing state of health, and who was next to be promoted to the collar of SS. Poor fellow! he died suddenly, and his death threw a universal gloom over Westminster Hall—unrelieved by the thought that the survivors who mourned him might pick up some of his business—a consolation which wonderfully softens the grief felt for the loss of a favorite Nisi Prius leader.

LORD TENTERDEN.

years as "a tall, erect, primitive-looking man, with a pig-tail, which latterly assumed the aspect of a heavy brass knocker of a door."[1] From his clerical connection he had a profound veneration for the Church, which we shall see was inherited by his offspring. His wife, in her humble sphere, was equally to be praised, and without neglecting her household affairs, she was seldom absent from the early service of the Cathedral.

Struggling with poverty, their virtues were rewarded with a son, who thus modestly recorded their merits on his tomb,

"Patre vero prudenti, matre piâ ortus."

This was Charles, their youngest child, the future Chief Justice of England, who was born on the 17th of October, 1762.

His infancy offered no omens or indications of his future eminence. Though always steady and well behaved, he was long considered a very dull lad, and it is said that his father, who intended that he should succeed him as a barber, used to express apprehensions lest he should be obliged to put the boy to another trade requiring less genius. Having learned to read at a dame's school, little Charley used to be employed in carrying home the wigs that had been properly frizzled and pomatumed, and he would accompany his father on the morning rounds to be made in the Cathedral close and in other parts of the city. We have transmitted to us a graphic description of the old gentleman "going about with the instruments of his business under his arms, and attended frequently by his son Charles, a youth as decent, grave, and primitive-looking as himself."[1]

But the youth's obscure destiny, which seemed inevitable, was suddenly changed to one highly intellectual, and he became nearly the finest classical scholar and the very best lawyer of his generation in England. This he owed to his admission on the foundation of the King's School, connected with Canterbury Cathedral, which had been founded by Henry VIII., and was then taught by Dr. Osmund Beauvoir, who was not only a very learned man but an admirable teacher, and eager to dis-

[1] Gentlemen's Magazine.

cover and to encourage talent in the boys under his care, whether of high or humble degree. Young Abbott, notwithstanding his demureness, was soon found out by this discriminating master, and as great pains were bestowed upon him as if he had been the son of a Duke or an Archbishop. We have interesting portraits of him in his boyhood by two of his schoolfellows. Says Sir Egerton Brydges, who pretended to be a descendant of the Plantagenets, or the Tudors, and of Charlemagne:

"From his earliest years he was industrious, apprehensive, regular and correct in all his conduct—even in his temper, and prudent in everything. I became acquainted with him in July, 1775, when I was removed from Maidstone to Canterbury school. I was about six or seven weeks his junior in age, and was placed in the same class with him, in which, after a short struggle, I won the next place to him, and kept it till I quitted school for Cambridge in autumn, 1780, in my eighteenth year. Though we were in some degree competitors, our friendship was never broken or cooled. He always exceeded me in accuracy, steadiness, and equality of labor, while I was more fitful, flighty, and enthusiastic. He knew the rules of grammar better, and was more sure in any examination or task. He wrote Latin verses and prose themes with more correctness, while I was more ambitious and more unequal. There was the same difference in our tempers and our tastes. He was always prudent and calm; I was always passionate and restless. Each knew well wherever the other's strength lay, and yielded to it."

"I remember him well,' added another contemporary, who rose to high preferment in the Church,—"grave, silent, and demure; always studious, and well behaved; reading his book instead of accompanying us to play, and recommending himself to all who saw and knew him by his quiet and decent demeanor. I think his first rise in life was owing to a boy by the name of Thurlow, an illegitimate son of the Lord Chancellor, who was at Canterbury school with us. Abbott and this boy were well acquainted, and when Thurlow went home for the holidays he took young Abbott with him. He thus became known to Lord Thurlow, and was a kind of helping

tutor to his son; and I have always heard and am persuaded that it was by his Lordship's aid he was afterwards sent to college. The clergy of Canterbury, however, always took great notice of him, as they knew and respected his father."

In his fourteenth year our hero ran a great peril, and met with a deep disappointment,—which may be considered the true cause of his subsequent elevation. The place of a singing-boy in the Cathedral becoming vacant, old Abbott started his son Charles as a candidate to fill it. The appointment would have secured to him a present subsistence, with the prospect of rising of £70 a year, which he and his family considered a wealthy independence for him. His father's popularity among the members of the Chapter was so great that his success was deemed certain, but from the huskiness of his voice objections were made to him, and another boy was preferred, who grew old enjoying the stipend which young Abbott had eagerly counted upon. Mr. Justice Richardson, the distinguished Judge, used to relate that going the Home Circuit with Lord Tenterden, they visited the Cathedral at Canterbury together, when the Chief Justice, pointing to a singing man in the choir, said, "Behold, brother Richardson, that is the only human being I ever envied: when at school in this town we were candidates together for a chorister's place; he obtained it; and if I had gained my wish, he might have been accompanying you as Chief Justice, and pointing me out as his old schoolfellow, the singing man."

However, the disappointed candidate, instead of abandoning himself to despair, applied with still greater diligence to his studies, and his master, proud of his proficiency, showed his verses to all the clergy in the neighborhood, and to others whom he could prevail upon to read them, or to hear them recited—boasting that the son of the Canterbury barber was qualified to carry off a classical prize from any aristocrat versifier at Westminster, Winchester, or Eton.

The crisis of the young man's fate occurred as he reached the age of seventeen. He was then Captain of the school, and it was necessary that some course should be determined upon by which he was to earn his bread.

His father proposed that he should be regularly bound apprentice to the trade in which he had been initiated from his infancy, and for which his capacity could no longer be questioned. This not only horrified Dr. Beauvoir, but caused a shock to the whole Chapter and to all the more cultivated inhabitants of Canterbury who had heard of the fame of their young townsman,—and a general wish was entertained that he might be sent to the University. A sum sufficient for his outfit was immediately collected in a manner calculated to prevent his feelings being hurt by hearing of the assistance thus rendered to him; and the trustees of his school unanimously conferred upon him a small exhibition in their gift, which happened to be then vacant: but this was not sufficient for his maintenance while he remained an undergraduate, and a delicacy existed about the supply being raised by an annual subscription of individuals. For some days there was a danger of the plan so creditable to Canterbury being entirely defeated, and the indenture binding the future Chief Justice to the ignoble occupation of shaving being signed, sealed, and delivered, when the trustees of the school came to a vote, that they had power to increase the exhibition from the funds of the school—and they did prospectively raise it for three years to a sum which, with rigid economy, might enable the object of their bounty to keep soul and body together till he should obtain his Bachelor's degree; then, by taking pupils or some other expedient, it was hoped that he might be able to provide for himself.

The bounty of individuals was carefully concealed from him, but at a subsequent period of his life, when he had been placed as a Judge on the Bench, he showed that he well knew the obligation under which he lay to the trustees. Attending a meeting of that body of which he had been elected a member, among the "AGENDA," there was "to consider the application from an exhibitioner of the school now at Oxford for an increase of his allowance." The Secretary declared that after a diligent search for precedents only one could be found, which had occurred many years before. "That student was myself," said the learned Judge, and he

immediately supplied the required sum from his own purse.

When it was announced to him that he was to be sent to the University he was much pleased, without being elated; for while he escaped the drudgery and degradation of a trade not considered so reputable as that of a grocer, from which Lord Eldon had shrunk when in a very destitute condition, he foresaw that there might be much mortification in store for him, and that although all knowledge was to be within his reach, he might ere long find it difficult to provide for the day passing over him. He had likewise serious misgivings as to how he should appear as a gentleman among gentlemen. Hitherto he had only been noticed as the barber's son, and in the pressure of business on a Saturday night, when he carried home any article to a customer, he had been well pleased to receive by way of gratuity a shilling or even a smaller coin. Not entering as a servitor, he was now to sit at table and to associate on a footing of equality with the sons of the prime nobility of England. While struggling forward in life he used to dread any allusion to such topics, but in his latter days he would freely talk of his first journey from Canterbury to Oxford, and the suddenness of his transition into a new state of existence. He was, on this occasion, accompanied by a prebendary of the Cathedral, who was a *Corpus* man, and who acted the part of a father to him.[1]

The following is a copy of his admission to his college, and of his matriculation:

"March 21st, 1781. Charles Abbott, Kent Scho."

"Termino Sti. Hilarii, 1781.
March 24°.

"C. C. C. Carolus Abbott, 18, Joannis de Civitate Cantuariensi Pleb. Fil."[2]

[1] Samuel Pepys, the famous Diarist, who was the son of a tailor, describes his great embarrassment when, become Secretary to the Admiralty and a favorite to the King and the Duke of York, he met a gentleman in reduced circumstances, to whom, when a boy, he used to carry home fine suits of clothes. Lord Tenterden must have had such renconters, but was never known to refer to them.

[2] "A true copy. "PHILIP BLISS.
"Keeper of the Archives of the University."

He tested his proficiency in classical literature by becoming a candidate for a vacant scholarship. Of this contest we have an interesting account in a letter written by him to his schoolfellow, Sir Egerton Brydges, who was then entered at Queen's College, Cambridge:

"Oxford, Sunday, March 18, 1781.

"DEAR EGERTON,

"I have been a week in Oxford, and almost finished the examination; the day of election is next Tuesday. I cannot look forward without great dread, for my expectations of success are by no means sanguine. . . . . . As yet I have kept to my resolution of drinking nothing. How long further I shall I know not, but I hope my pride will soon serve to strengthen it. I wish Tuesday were over."

"Monday Night.

"This has been a heavy day indeed. I would not pass another in such anxiety for two scholarships. Disappointment would be easier borne than such a doubtful situation. It is a great pleasure to me to be able to reflect that there is one person who will feel for me. What happiness would it have been to me had we had the good fortune to be both of the same university! Our examination has been very strict. . . . Good night."

"Tuesday, 12 o'clock.

"At last it is all over, and——Now your expectations are at the highest——I am——Guess——elected. You will see from my manner of writing that I am very much pleased—and so in truth I am. The President said to me (but don't mention it to any one) that I had gained it entirely by my own merit—that I had made a very good appearance, and so had all the other candidates.

"Yours most affectionately,

"C. ABBOTT."

The following shows that he then felt much more exultation than on the day of his being made Chief Justice of England, when I myself observed him repeatedly yawn on the bench from listlessness:

"C. C. C., April 3, 1781.

"Yes, my dear Egerton, it does give me the most heartfelt pleasure to hear how kindly my friends rejoice in my success. Believe me, Egerton, the chief pleasure that I feel on this occasion is reading my letters of con-

gratulation. I needed nothing to assure me of your friendship. Had any proof been wanting, you kind letter would have been sufficient. The examination was indeed a tedious piece of work, but I would undergo twice the trouble for the pleasure of knowing that I had answered the expectations of my friends. I have received two letters from my dearest mother, in which she gives me an account how sincerely all my friends at Canterbury have congratulated her on my success—and friends so much superior to our humble condition, that she says, 'such a universal joy as appeared on the occasion I believe hardly every happened in a town left by a tradesman's son.' Who would not undergo any labor to give pleasure to such parents? . . . You have heard me wish that I had never been intended for the university. It was impious; it was ungrateful: I banish the thought for ever from my yeart. Not that I foresee much pleasure in a college life, but I know that my present situation is perhaps the only comfort to those whose age and misfortunes have rendered some alleviation of care absolutely necessary. Pardon the expression of these sentiments to you, and consider that they flow from breast of a son.

"What a dissatisfied wretch I am! But a little while past to be a scholar of Corpus was the height of my ambition; that summit is (thank Heaven) gained—when another and another appears still in view. In a word, I shall not rest easy till I have ascended the rostrum in the theater."

His conduct during the whole of his academical career was most exemplary. Avoiding all unnecessary expense he contrived always to preserve a decent appearance, and he gradually conquered the prejudice created against him by the whispers circulated respecting his origin and early occupations. The college tutor was Mr. Burgess, afterwards Bishop of Salisbury, who speedily discovered his merit and steadily befriended him.

In the latter part of the eighteenth century, Oxford education was at the lowest ebb, and a respectable degree might be taken by answering to the question, "Who was the founder of this university?" ALFRED THE GREAT! The study of mathematics had fallen into desuetude like

that of alchemy. Young Abbott, therefore, had no opportunity of crossing the Asses' Bridge, and through life he remained a stranger to the exact sciences. But he was saved by the love of classical lore, which he brought with him from Canterbury, and in which he found that a few choice spirits voluntarily participated. There being yet no tripos, the only academical honors that could be gained were the Chancellor's two medals for Latin and English composition, and these young Abbott had resolved to try for. The siege of Gibraltar had then effaced all the disasters and disgraces of the American war, and was eagerly exchanged for the capitulation of Saratoga. Under date March 5, 1783, Abbott writes to his dear friend :—

"The subjects of our prizes were given out yesterday —for the Bachelors, THE USE OF HISTORY, for the Undergraduates, THE SEIGE OF GIBRALTAR—CALPE OBSESSA. I am very much displeased with the latter, for it appears to me to be at once unclassical and commonplace—

'Gun, drum, trumpet, blunderbuss, and thunder !'

But it will not do to set one's self against it. So I must endeavor to make the most of it. Yet I feel my mind labor with omens of ill success. It is certainly a noble and splendid action. The difficulty will be in separating the circumstances peculiar to it from the common occurrences which are to be found as well as in all other actions as in this."

Our aspirant's first attempt was not crowned with the success he hoped for; but he was encouraged to persevere by reading on his verses when returned to him, "*quàm proximè accessit*"—the mark of approbation bestowed on the second best. More than forty years after, when a Judge on the circuit at Salisbury, he met the Rev. W. L. Bowles, the poet, who had carried off the prize. His Lordship immediately reverted to the literary contest in which they had been engaged, and very frankly confessed that the rule had been observed, DETUR DIGNIORI.[1]

[1] The poem may be seen at full length in "Poemata Proæmiis Cancellarii Academicis Donata," &c., Oxoniæ, 1810, vol. i. p. 123. As a specimen, I

The subject of the prize poem for the following year was GLOBUS AEROSTATICUS; Lunardi's voyages in his balloon having made many people believe that this vehicle, although its moving power be the medium in which it floats, might be guided like a ship impelled by the wind across the ocean; and that a method had been discovered of establishing an easy intercourse, to be reckoned by hours, between the most distant nations.[1] Abbott having again invoked the Cantuarensian muse, by her inspiration he was successful, and, as victor mounting the rostrum in the theater, amidst loud plaudits, recited the following beautiful lines:—

GLOBUS AEROSTATICUS.

Pondere quo terras premat aer, igneus ardor
Quam levis, et quali raptim nova machina nisu
Emicet in cælum, et puro circum æthere ludat,
Pandere jam aggrediar; juvat altas luminis oras
Suspicere, et magni rationem exquirere mundi.
Quippe etenim, ut facili cura, certoque labore
Hæc lustrare queas, miro en! spectacula ritu
Circum ulto tibi mille adsunt, rerumque recludens
Dat natura modum et primordia notitiai.
Namque ubi sulphureis concocta bitumina venis,
Ausa ultro mediæ penetrare in viscera terræ,
Gens hominum effodit, fundo illic semper ab imo
Exsudare leves æstus, summisque sub antris
Se furtim glomerare ferunt, quin sæpe repenti
Cum sonitu accensos, et diræ turbine flammæ.

offer a short extract, giving an account of the state of things after the failure of the grand assault:—

"Nec vero, ut retulit nox exoptata tenebras
Cessavit furor, ardenti conjecta ruina
Sævit adhuc longe missi vis flammea ferri.
Continuo exustæ dant mœsta incendia naves,
Umbrosumque vadum fumanti tramite signant.
Securi Britones geminata tonitrua torquent;
Ipse inter medios, altoque serenior ore,
Dux late Martem spectat sublimis opacum,
Seu quondam proprio vestitum fulmine numen
Arma tenens, fatique velut moderatur habenas.
Audit insolitum sola sub nocte fragorem
Adversum Libyæ littus, longeque tremescit
Montanas inter latebras exsomnis hyæna!"

[1] I have often hear my father relate the consternation excited by this same Lunardi in the county of Fife. He had ascended from Edinburgh, and the wind carried him across the Firth of Forth. The inhabitants of Cupar had observed a speck, which was at first supposed to be a bird, grow into a large globe, and pass at no great height over their heads, with a man in a boat depending from it. Some thought they could descry about him the wings of an angel, and believed that the day of judgment had arrived.

Rumpere vi montem, superasque effervere in auras.
At vero angustis si terræ inclusa cavernis
Ignea vis longum subter duraverit ævum,
Quas ibi mox clades eheu ! quantasque videbis
Faucibus eruptis volvi super æthera flammas !
Quid repetam Ausoniis tibi nuper in oris
Concussæ cecidere urbes? quot corpora letho
Ipsa etiam horrendis subter distracta ruinis
Terra dedit? dum jam luctantem funditus æstum,
Collectosque vomens ad cœlum efflaverat ignes.
Usque adeo est quædam subtilis cæca animai
Materies, alti quæ vulgo ad sidera cœli
Vi propria violat, et terras contemnit inertes.
Ergo etiam hos æstus si quis finxisse per artem
Noverit, et levibus poterit covcludere textis,
Continuo e terris volucrem miro impete cernas
Ire globum, aeriisque ultro se credere ventis,
Et jam jamque magis liquidas conscendere nubes
Altius, atque atro penitus se condere cœlo.
Verum ubi jam longo in spatio eluctatus abivit
Aurai levis æstus, et igneus exiit ardor.
Tum demum ætheriis idem se rursus ab oris
Demititet sensim, et mortalia regna reviset.
Quare age, et hœc animo tecum tecum evolvisse sagaci
Cura sit, et cæcas meditando exquirere causas.
Nec sine consilio fieri hæc, sine mente rearis,
Aut rebus non jura dari, verum omnia volvi
Lege una, et certo sub fœdere labier orbem.
Principio hanc omnem cœli spirabilis auram,
Terraique oras, et lati mimora ponti,
Vis eadem regit, ac uno omnia corpora ritu
In medium, magna connixa cupidine tendunt,
Pondere quidque suo ; firmis ita nexibus orbis
Scilicet, et toto circum se turbine versat.
Proinde, magis gravibus, densisque ut corpora cuncta
Seminibus constant, ita per leviora necesse est
Subsidisse magis ; queis ergo rarior intus
Textura, et levibus constant quæcunque elementis ;
Hæc contra e medio, sursum eluctata videntur
Volvere se supra, et magno circum æthere labi :
Quinetiam hic, tenuis quanquam et diffusilis, aer,
Mollia qui rebus dat pitæ pabula, et omnem
Herbarumque lovet prolem, gentemque animantum
Ipse etiam, immani descendens pondere, terris.
Incumbit, gravibusque urget complexibus orbem.
At vero insolitos si qua sibi parte calores
Hauserit, hac ultro se latius ipse relaxans
Rarescensqu aer, leviori ita corpore, longe
Emicat e terra, et cœlo spatiatur in alto.
Hinc adeo expressos nimio sub sole vapores
Arida se per prata fernut attollere, et alte
Cœruleam nitidis variare coloribus æthram ;
Sæpe itaque et subitis incendi ardoribus auras
Per noctem, et longos in nubila spargier ignes.
Nonne vides etiam taciti per devia ruris,

Agricolæ ut parvo glomeratus de lare fumus
Avolat, et tenuem rotat alte in sidera nubem ?
Quare etiam, atque etiam, commixto semper ab igni
Mutaturque aer, alienaque fœder discit,
Et varium exercet, converso lege, tenorem.
  Scilicet has rerum species, hæc fœdera, secum
Contemplata diu, et vigilanti mente secuta,
Hinc etiam ipsa novum simili sub imagine cœptum
Gens humana movet, curruque evecta per auras
Torquet iter, cœlumque audet peragrare profundum.
  Ergo etiam hauc ipsam versu me attingere partem
Ne pigeat ; tenues nec dedignere monendo
Tu didicisse artes ; quippe ultro carbasa Persæ
Dant levia, et viridi glomerata sub arbore bombyx
Vellera suspendit ; tu leto tenuia fuco
Texta line, exiguoque liquescens adsit ab igni
Et cera, et spissum Panchaio e cortice gluten.
Maximus hic labor est, hæc alti gloria cæpi.
Ni facias, laxi per aperta foramina veli
Heu ! tibi mox raræ nimium penetrabilis auræ
Vis ibit, frustraque artem tentabis inanem.
  Quod superest, seu jam piceas secta abiete tædas,
Et stipulam crepitantem, et olentis vellera lanæ,
Supponi, rapidumque velis advertier ignem,
Seu magis ardenti succensas subter oliva
Lampadas admota placeat suspendere flamma,
Quicquid erit, pariter raros bibet ipsa calores
Ingentemque tumens se machina flectet in orbem.
  Quid dicam, et quales novit tibi chymicus artes ?
Quove modo effusum resoluto e sulphure acetum,
Et chalybis ramenta, levesque a flumine rores
Ille docet miscere, atrumque exsolvere in ignem ?
Nempe ea cum proprio jam collabefacta calore
In sua se expediunt iterum primordia, et arctos
Dissolvunt nexus, et vincla tenacia laxant :
Ignea tum subito rapidæ tibi vis animai
Exagitata foras, validis exæstuat ultro
Vorticibus, clausaque arcte fornace remugit ;
Hanc ipse appositis effunde canalibus, ipse
Pendentem immissis distende vaporibus orbem.
  Quin age, nec pigro Britonum depressa veterno
Corda kiu jaceant, dum late ingentibus ausis
Gallia se in meritos attollit sola triumphos.
Illa quidem positis ultro pacatior armis,
Hanc ipsam in laudem, et potioris munera palmæ
Advocat, illa etiam faustos jam experta labores
Omnia magna dedit, certæque exempla viai
Attonitam quoties tremefacto pectore gentem
Vidit arundinea prælabens Sequana ripa
Stare, laborantes volventem in corde tumultus,
Audax dum ante oculos magni moliminis auctor
Avolat in cœlum, et spissa sese occulit umbra ;
Aut late aerium faustis aquilonibus æquor
Tranat ovans, validasque manu moderatur habenas.
Tum primum superi patefacta in regna profundi

Mortales oculi, mediæ e regionibus æthræ,
Convertere aciem, densis dum obducta tenebris
Sub pedibus terra atque hominum spatia ampla recedunt.
Nam neque per totum cessabant nubila cœlum
Densari, et vastos umbrarum attollere tractus,
Nec cuncti se circum ultro variare colores,
Cuncto figurarum late convolvier ora ;
Præsertim extremo cum jam pendebat Olympo
Sol, transversa rubens ; aut primum candida Phœbe
Monstrâratque ortum, et cœlo se pura ferebat.
Atqui illic vacuas nec jam vox, nec sonus aures
Attingit, sed inane severa silentia regnant
Undique per spatium, et vario trepidantia motu
Corda quatit pavor, at que immixto horrore voluptas.
Hæc adeo, hæc præclara novæ primordia famæ
Gallia, tu posuisti ; hoc jam mortalibus unum
Defuit, excussis dudum patefacta tenebris
Alta animi ratio, et vitai norma severæ
Eluxere ; patent terræque, atque æquora ponti,
Astrorumque viæ, atque alti lex intima mundi.
Jamque adeo et liquidæ quæ sit tam mobilis auræ
Natura, et superi passim per inania cœli
Qua ratione gerant se res, et fœdera nectant,
Explorare datur ;. que pacto rarior usque
Surgat, et in vacuum sensim se dissipet aer ;
Frigora quæ, ignes lateant ; quanto impete venti
Huc superis, illuc infernis, partibus instent,
Convulsumque agitent transverso flamine cœlum.
Ergo etiam humanam, concepto hinc robore, mentem
Insolito tandem nisu, et majoribus ausis,
Tollere se cernes, pentitusque ingentia lati
Aeris in spatia, et magni supera alta profundi
Moliri imperium ac multa dominarier arte.

He thus announced his success to his friend Egerton :

"C. C. C., June 16, 1784.

"I have delayed writing to you for some time, partly because I waited for the decision of the prizes, but principally because I have been constantly employed in endeavoring to escape my own thoughts by company and every means I could. I am now, however, repaid for my anxieties. They said it was a hard run thing. There were sixteen compositions sent in. . . . All that has happened this morning appears a dream."

Soon after this his joy was turned into mourning by the death of his father. His mother continued to keep the shop at Canterbury for the sale of perfumery, and he devotedly strove to comfort and assist her. For her sake he declined an advantageous offer to go to Virginia, as tutor to a young man of very large fortune there. He was

willing to forego a considerable part of his own salary, so that £50 a year might be settled on his mother for life. "This," he wrote, "with the little left her by my father, would afford her a comfortable subsistence without the fatigue of business, which she is becoming very unable to bear."[1] But this condition being declined, the negotiation went off.

The English Essay was still open to him, and the next year he likewise carried off this prize. If his performance was less dazzling, it gave more certain proof of his nice critical discrimination, and, from the exquisite good sense which it displayed, of his fitness for the business of life. The subject was THE USE AND ABUSE OF SATIRE.

In this composition he showed that he had already acquired (whence it is difficult to conjecture) that terse, lucid, correct, and idiomatic English style which afterwards distinguished his book on the LAW OF SHIPS, and his written judgments as Chief Justice of the King's Bench. The following is his analytical division of the subject, evincing the logical mind which made him a great judge:

"Early use of panegyrical and satiric composition; gradual increase of the latter with the progress of refinement.

"Different species of satire, invective, and ridicule.

"General division of satire into personal, political, moral, and critical.

"I. 1. Personal satire necessary to enforce obedience to general instructions. 2. Its abuse, when the subject is improperly chosen, when the manner is unsuitable to the subject, and when it proceeds from private animosity.

"II. 1. Political satire, necessary for the general support of mixed governments. 2. Its abuse, when it tends to lessen the dignity of the supreme authority, to promote national division, or to weaken the spirit of patriotism.

"III. 1. Moral satire, its use in exposing error, folly, and vice. 2. Its abuse, when applied as the test of truth, and when it tends to weaken the social affections.

"IV. 1. Critical satire, its use in the introduction and

[1] Letter to Sir Egerton Brydges, 2nd June, 1785.

support of correct taste. 2. Its abuse, when directed against the solid parts of science, or the correct productions of genius.

"Conclusion. Comparison of the benefits and disadvantages derived from satire. Superiority of the former."

His reflections on Personal Satire will afford a fair specimen of his manner:

"Personal satire has been successfully directed in all countries against the vain pretenders to genius and learning, who, if they were not rendered contemptible by ridicule, would too often attract the attention, and corrupt the taste, of their age. By employing irony the most artful, and wit the most acute, against the unnatural and insipid among his contemporaries, Boileau drew the affections and judgment of his nation to the chaste and interesting productions of Moliere and Racine.

"Such have been the advantages derived from personal satire, but so great on the contrary are the injuries resulting from its misapplication, that the legislation of all nations has been exerted to restrain it. For if they, whose failings were unknown and harmless, be brought forth at once to notice and shame, or if, from the weakness common to human nature, illustrious characters be made objects of contempt, the triumphs of vice are promoted by increasing the number of the vicious, and virtue loses much of its dignity and force by being deprived of those names which had contributed to its support. Not less injurious to science is the injust censure of literary merit, which tends both to damp the ardor of genius, and to mislead the public taste. The most striking examples of the abuse of personal satire are furnished by that nation in which its freedom was the greatest. The theaters of Athens once endured to behold the wisest of her philosophers, and the most virtuous of her poets, derided with all the grossness of malicious scurrility. Nor has modern poetry been altogether free from this disgrace. Fortunate, however, it is that, although the judgment of the weak may be for a time misguided, truth will in the end prevail; the respect and admiration due to the names of Burnet and Bentley, of Warburton and of Johnson, are now no

longer lessened by the wit of Swift, or the asperity of Churchill.

"Even where the subject or design is not improperly chosen, abuse may still arise from the disposition and coloring of the piece. When bitterness and severity are employed against men whose failings may be venial and light, or ridicule degenerates either into the broad attacks of sarcastic buffoonery, or the unmanly treachery of dark hints and poisonous allusions, not only the particular punishment is excessive and unjust, but also general malice is fostered by new supplies of slander."

In conclusion, he thus strikes the balance between the evils inflicted by satire, and the benefits which it confers:

"From this general representation of the good and ill effects of satire, we may be enabled to form a comparison of their respective importance. By the improper exercise of satire individuals have sometimes been exposed to undeserved contempt; nations have been inspired with unjustifiable animosity; immoral sentiments have been infused; and false taste has received encouragement. On the contrary, by the just exertions of satire personal licentiousness has frequently been restrained; the establishments of kingdoms have been supported, and the precepts of morality and taste conveyed in a form the most alluring and efficacious. The success, however, of all those productions that have not been directed by virtue and justice, has been confined and transient, whatever genius or talents might be employed in their composition; by the wise among their contemporaries they have been disregarded, and in the following age they have sunk into oblivion. But the effusions of wit, united with truth, have been received with universal approbation, and preserved with perpetual esteem, their influence has been extended over nations, and prolonged through ages. Hence, perhaps, we need not hesitate to conclude that the benefits derived from satire are far superior to the disadvantages with regard both to their extent and duration; and its authors may therefore deservedly be numbered among the happiest instructors of mankind."

In 1785 he became B. A. If the modern system of

honors had been then established, he would no doubt have taken a double first class; but when this degree was conferred upon him and others, there was nothing in the proceeding to distinguish him from the greatest dunce or idler in the whole university. By his prize compositions and college exercises his fame was established, and his fortune was made. All that followed in his future career was in a natural sequence, and with the exception of the deafness of Sir Samuel Shepherd when Attorney General, which led to Abbott being CHIEF JUSTICE instead of remaining a puisne judge, there appeared nothing of accident or extraordinary luck in his steady advancement.

From the completion of his second year he had begun to have private pupils in classics, whose fees eked out sufficiently his scanty allowance. He neither gave nor accepted invitations to wine-parties; his apparel was ever very plain, though neat; and instead of getting in debt by buying or hiring hunters, it is a curious fact that he never once was on horseback during the whole course of his life. In the declining state of his health, shortly before his death, he was strongly recommended to try horse exercise; but, as he related to his old friend, Philip Williams (who told me), he objected "that he should certainly fall off like an ill-balanced sack of corn, as he had never crossed a horse any more than a rhinoceros, and that he had become too stiff and feeble to begin a course of cavaliering." He added, with a sort of air of triumph, "My father was too poor ever to keep a horse, and I was too proud ever to earn a sixpence by holding the horse of another."[1]

Abbott's college was very desirous of securing his services, and soon after taking his degree he was elected a fellow and appointed junior tutor along with Mr. Burgess, who was deligнted to have him as a colleague. Under them CORPUS rose considerably in reputation, and it was selected by careful fathers who anxiously looked out for a *reading college*.

While fellow and tutor Abbott was intended for the church, and the time now approached when he ought to

[1] Yet so gained his livelihood on his arrival in London, a still greater man—WILLIAM SHAKSPEARE!

go into orders. His destination was again changed by his having become private tutor to a son of the famous Mr. Justice Buller. In a letter to his friend Egerton Brydges, dated 22d June, 1785, he says:—

"I had received a slight hint that the President had another offer to make to me. This is the tuition of Judge Buller's son, who will come from the Charter-house to enter at this college next term. I was desired to fix the salary; but upon consultation with Sawkins, declined it. The President and Dr. Bathurst, canon of Christ Church (who recommended the College to the Judge), are disposed to think of £200 a year, exclusive of traveling expenses; but whether they will propose this to the Judge, or desire him to name, I am not certain. Mr. Yarde has a large fortune independent of his father, for which he changed his name. Sawkins advised me (and the President approved) to refuse one hundred guineas. Between the two offers there could be no hesitation; and indeed my friends here thought the American place unworthy of my acceptance. If we agree upon terms, I propose to spend this summer in France, if the Judge wishes his son's tutor to be able to speak French. I am particularly pleased with the appearance of this offer, as it will give me an opportunity of being much in London."

In a letter of July 10th, 1785, he adds:

"The plan which I mentioned to you in my last respecting Mr. Yarde has been so altered by the Judge, that the parts of it from which I promised myself most pleasure and advantage are gone. Still the offer is too good to be refused. It is to attend him in college only. Family circumstances make the Judge wish to have his son at home in London as little as possible. The matter is not entirely settled; but for residence with him here during the terms I shall have, I believe, a hundred guineas a year. If he stays here any vacation, or if I accompany him out (which it seems I shall sometimes do), a consideration is to be made for it. Mr. Willoughby, a particular friend of the Judge, and an acquaintance of President, is commissioned to settle the affair."

The affair was at last settled satisfactorily, and Abbott did act as Mr. Yarde's private tutor for two or three

years, sometimes accompanying his pupil to the family seat in Devonshire. The quick-sighted Judge soon discovered Abbott's intellectual prowess, and his peculiar fitness for law. He therefore strongly advised him to change his profession, and, somewhat profanely, cited to him a case from the Year Books, in which the Court laid down that "it is actionable to say of an attorney that he is a d——d fool, for this is saying that he is unfit for the profession whereby he lives; but *aliter* of a parson, *par ce que on poet estre bon parson et d——d fool.*" In serious tone the legal sage pronounced, that with Abbott's habits of application and clear-headedness his success was absolutely certain—saying to him, "You may not possess the garrulity called *eloquence*, which sometimes rapidly forces up an impudent pretender, but you are sure to get early into respectable business at the bar, and you may count on becoming in due time a puisne Judge."[1] Although Abbott had been contented with the prospect of obscurely continuing a college tutor till he succeeded to a country living, where he might tranquilly pass the remainder of his days, he was not without ambition; and when he looked forward to his sitting in his scarlet robes at the Maidstone assizes, while citizens of Canterbury might travel thither to gaze at him, he was willing to submit to the sacrifices, and to run the risks which, notwithstanding the sanguine assurances of his patron, he was aware must attend his new pursuit. He was now in his twenty-sixth year, and he had resided seven years in his college. His only certain dependence was his fellowship, the income of which was not considerable; but from the profits of his tutorship he had laid by a little store, which he hoped might not be exhausted before it was replenished by professional earnings.

In much perplexity as to the course of study he should adopt to fit himself for the bar, he thus addressed his faithful friend:—

[1] Sir Egerton Brydges, after mentioning how Abbott's destiny depended on his being tutor to Buller's son, merely adds, "That learned and sagacious Judge immediately appreciated his solid and strong talents, and recommended him to embrace the profession of the law, rather than of the Church, for which he had hitherto designed himself." The language in which the advice was given rests on tradition.

"C. C. C. June 13th, 1787.

" . . . . I can never sufficiently thank you for the offer of your house in town. There are two modes in which I might enter the profession of the law—that which you propose, of residing chiefly in Oxford till I am called to the bar, which would be the line of study which I should choose; but then what am I to do when called to the bar with the enormous expense of going circuits, &c.?—and that of going at once to a special pleader, and practicing first below the bar. As far, however, as I am able to comprehend this line of practice, which seems to me to consist in a knowledge of forms and technical minutiæ, it would be very unpleasant to me, and the necessity of sitting six or eight hours a day to a writing-desk renders it totally impracticable, as from the peculiar formation of the vessels in my head, writing long never fails to produce a headache. Indeed any great exertion has always the same effect, so that on this account alone I think it will be wiser to choose a more quiet profession."

However, his misgivings were much quieted by a conference he had with his namesake Abbott, afterwards elected Speaker of the House of Commons, and created Lord Colchester. Thus, in a letter dated 13th October, 1787, he writes to Sir Egerton:—

"I received a visit from Abbott this morning, and we held a long conversation together. He spent a year in a Pleader's office, and another in a Draughtman's, and uow practices in equity. Very particular reasons determined him to the Court of Chancery; but he would advise me to adopt the common law, and chiefly on this account: the practice of the Court of Chancery being necessarily confined to certain branches of the law in exclusion of certain others, a man's general professional connections can contribute less to his assistance, and he has less opportunity of distinguishing himself. At the same time a person who begins and goes forward in equity seldom is able to make himself a perfect master of his profession, or qualify himself for many of its highest offices. With regard to my own particular case, Abbott thinks that, even if no connection determined me, it would be better to take one year to look into books and

courts a little, than to enter at once into an office where I could not possibly understand the business without previous knowledge. This you know, is exactly what I have always thought, and wished others to think. He thinks too, that with proper application, I might get sufficient knowledge by working one year in an office to enable me to proceed afterwards by myself, and doubts not that by the help of two or three introductions to men in business, such as Foster, &c., I should make my way without expending so much as six hundred pounds. This, you see, is all very flattering. I wish it be not too flattering."

Being thus reassured, on the 16th day of November, 1787, he was admitted a student of the Middle Temple;[1] and he soon after hired a small set of chambers in Brick Court. By Judge Buller's advice, to gain the knowledge of writs and practice, for which in ancient times some years were spent in an Inn of Chancery, he submitted to the drudgery of attending several months in the office of Messrs. Sandys and Co., eminent attorneys in Craig's Court, where he not only learmed from them the difference between a Latitat, à Capias, and a Quo Minus, but gained the good will of the members of the firm and their clerks,[1] and laid the groundwork of his reputation for industry and civility which finally made him Chief Justice.

His next step was to become the pupil of George Wood, the great master of Special Pleading, who had initiated in this art the most eminent lawyers of that generation. Resolved to carry away a good penny-

[1] "Die 16 Novembris 1787.

"Ma[r]. Carolus Abbott Collegii Corporis Christi apud Oxonienses Scholaris, Filius natu secundus Johannis Abbott, nuper de Civitate Cantuariensi, defuncti, admissus est in Societatem Medij Templi Londini specialiter,

"Et dat. pro fine . . . 4:0:0"

From the following entry in the books of C. C. C., it appears that at this time he had leave of absence from his College :—

"1787. Nov. 13. Abbott, a Bachelor of the House, applied for leave of absence to keep the London Law Terms. The same was granted (conformably to Statute) by the President, one Dean, one Bursar, and two other Fellows *Promotionis causâ*."

[2] "Nor did I not their Clerks invite
To taste said venison hashed at night."

Pleader's Guide.

worth for the 100 guinea fee which he paid, he here worked night and day; he seemed intuitively to catch an accurate knowledge of all the most abstruse mysteries of the DOCTRINA PLACITANDI, and he was supposed more rapidly to have qualified himself to practice them than any man before or since. The great model of perfection in this line, in giving an account of his status pupillaris under the eminent special pleader, TOM TEWKESBURY,[1] sings—

> "Three years I sat his smoky roof in
> Pens, paper, ink, and pounce consumin'."

But at the end of one year Abbott was told that he could gain nothing more by quill-driving under an instructor.

With characteristic prudence he resolved to practice as a special pleader below the bar till he had established such a connection among the attorneys as should render his *call* no longer hazardous, citing Mr. Law's splendid success from following the same course. He accordingly opened shop, hired a little urchin of a clerk at ten shillings a week, and let it be understood by Messrs. Sandys and all his friends that he was now ready to draw Declarations, Pleas, Replications, and Demurrers with the utmost despatch, and on the most reasonable terms. Clients came in greater numbers than he had hoped for, and no client that once entered his chambers ever forsook him. He soon was, and he continued to be, famous for "the ever open door, for quick attention when despatch was particularly requested, for neat pleadings, and for safe opinions."[2]

Seven years did he thus go on, sitting all day, and a great part of every night, in his chambers—verifying the maxim inculcated on City apprentices, "Keep your shop and your shop will keep you." He was soon employed by Sir John Scott, the Attorney General, in pre-

[1] Hero of ANSTEY'S '*Pleader's Guide*,' a poem which is, I am afraid, now antiquated, and which will soon become almost unintelligible from the changes in our legal procedure, but the whole of which I have heard Professor Porson, at the Cider Cellar in Maiden Lane, recite from memory to delighted listeners. He concluded by relating, that when buying a copy of it and complaining that the price was very high, the bookseller said 'Yes, Sir, but you know *Law-books* are always very dear."

[2] Townsend's Twelve Judges, vol. i. 243.

paring indictments for high treason and criminal informations for libel in the numerous state prosecutions which were going on during "the reign of terror," and by his pupils and his business he was clearing an annual income of above £1,000. He had now reached the age of thirty-three, which although it is considered in our profession as early youth, the rest of the world believe to smack of old age.[1] He exclaimed, "Now or never must I take the leap into the turbid stream of forensic practice, in which so many sink, while a few *rari nantes in gurgite vasto*—are carried successfully along to riches and honor."

Accordingly he was called to the bar in Hilary Term, 1796, by the Society of the Inner Temple,[2] and a few weeks after he started on the Oxford Circuit. I myself joined that circuit about fourteen years later, when I formed an intimacy with him, which continued till his death. I then found him with a junior brief in every cause tried at every assize town; and I heard much of his rapid progress and steady success, with a good many surmises, among his less fortunate brethren, that it was not from merit alone that he had surpassed them. He had at once stepped into full business, and this they

[1] I remember Mr. Topping giving great offense to the junior members of the bar, who expected to be considered young men till fifty-five, by observing, when counsel for the plaintiff in a crim. con. cause, that the defendant's conduct was the more inexcusable, "as the heyday in the blood was over with him, and he had reached the mature age of thirty-three." According to Lord Byron, a lady thinks she has married an aged husband, although he may be several years younger than that:

"Ladies even of the most uneasy virtue
Prefer a spouse whose age is under *thirty*."

[2] The following is a copy from the books of that Society of his admission and of his call:

"INNER TEMPLE.

"Charles Abbott, second son of John Abbott, late of the City of Canterbury, deceased (who was admitted of the Society of the Middle Temple the sixteenth day of November, in the year of our Lord 1787, as by Certificate from the Middle Temple appears), admitted of this Society the eighth day of May, in the year of our Lord 1793.

"*Calls to the Bar.—Hilary Term*, 1796.

"Mr. John Fuller,
"Mr. Charles Abbott,
"Mr. William Lloyd,
"Mr. John Wadman,
} 15th Feb. 1796."

ascribed to the patronage of an old Attorney called Benjamin Price, who had acted as clerk of assize for half a century, and was agent in London for almost all the country attorneys in the eight counties which constituted the Oxford Circuit. But in truth Abbott was greatly superior to all his rivals as a junior counsel; and this superiority was quite sufficient to account for his success, although he certainly had been very civil always to old Ben, and old Ben had been very loud in sounding his praise. He was most perspicacious in advising on the bringing and defense of actions; he prepared the written pleadings on either side very skillfully, and without too much finesse; he was of admirable assistance at the trial to a shallow leader; he acknowledged that he was an indifferent hand at cross-examining adverse witnesses, but he never brought out unfavorable facts by indiscreet questions; he had great weight with the Judge by his quiet and terse mode of arguing points of law arising at nisi prius; and if a demurrer, a motion in arrest of judgment, a special case, a special verdict, or a writ of error was to be argued in banc, he was a full match for Holroyd, Littledale, or Richardson.

In about two years after his call a deep sensation was produced by the unexpected prospect of an opening for juniors on the Oxford Circuit. It was the custom in those days, that while the Judges went all the way round in their coaches and four, the counsel journeyed on horseback. Abbott refused to cross the most sedate horses which were offered to him, from the certain knowledge that he must be split; but he took it into his fancy that it would be a much more easy matter to drive a gig, although to this exercitation he was equally unaccustomed. As far as Gloucester, after some hair-breadth escapes, he contrived to get, without fracture or contusion; but in descending a hill near Monmouth his horse took fright, he pulled the wrong rein, he was upset, and, according to one account, "he died immediately from a fracture of the skull," and according to another, "he was drowned in the Wye." The news was brought to the assembled barristers at their mess, and all expressed deep regret. Nevertheless the brightened eyes and flickering smiles of some led to a suspicion that

the dispersion of briefs might be a small recompense for their heavy loss. It turned out that there had been considerable exaggeration as to the fatal effect of Abbott's overturn; but in truth his leg was broken in two places, and he had received very severe injury in other parts of his body—so that from this accident he was permanently lame, and he had a varicose vein in his forehead for the rest of his days. Although he was able in a few weeks to return to business, his constitution materially suffered from this shock, and the inability to take exercise which it superinduced.

While flourishing on the circuit he had as yet very slender employment at Guildhall, and he felt a great desire to participate in the commercial business there, which is considered the most creditable and the most lucrative in the courts of common law. With this view, in spite of the sneers of Lord Ellenborough at book-writing lawyers, by the advice of Sir John Scott, who had become his avowed patron, he composed and published a treatise 'ON MERCHANTS' SHIPS AND SEAMEN.' In no department does English talent appear to such advantage as in legal literature; and we have gone on from bad to worse in proportion as method and refinement have advanced elsewhere. Bracton's work, *De Legibus et Consuetudinibus Angliæ*, written in the reign of Henry III., is (with the exception of *Blackstone's Commentaries*) more artistically composed and much pleasanter to read, than any law-book written by any Englishman down to the end of the reign of George III.—while we were excelled by contemporary juridical authors not only in France, Italy, and Germany, but even in America. Abbott did a good deal to redeem us from this disgrace. Instead of writing all the legal dogmas he had to mention, and all the decisions in support of them, on separate pieces of paper, shaking them in a bag, drawing them out blindfold, and making a chapter of each handful, connecting the paragraphs at random with conjunctives or disjunctives ("And," "So," "But," "Nevertheless")—he made an entirely new and masterly analysis of his subject; he divided it logically and lucidly; he laid down his propositions with precision; he supported them by just reasoning, and he

fortified them with the dicta and determinations of jurists and judges methodically arranged. His style, clear, simple, and idiomatic, was a beautiful specimen of genuine Anglicism. The book came out in the year 1802, dedicated (by permission) to the man who had suggested the subject to him—now become Lord Chancellor Eldon. Its success was complete. Not only was it loudly praised by all the Judges, but by all the City attorneys, and, ever after, the author was employed in almost all the charter-party, policy, and other mercantile causes tried at Guildhall. Nay, the fame of the book soon crossed the Atlantic, although it was for some time ascribed to another; for, as I have heard the true author relate with much glee, the first edition, reprinted at New York, was announced in the title-page to be by "the RIGHT HONORABLE CHARLES ABBOTT, SPEAKER OF THE HOUSE OF COMMONS IN ENGLAND." This was his distinguished namesake, Lord Colchester, who had been at the bar, and who was complimented by the American editor for employing his time so usefully during the recess of Parliament.[1]

Our hero was now as eminent and prosperous as a counsel can be at the English Bar, who is not a leader—either with a silk gown as the ordinary testimonial of his eminence—or, if this for any reason be withheld from him, dashing into the lead in bombazeen, like Dunning, Brougham, and Scarlett.[2] Abbott wore the bombazeen quite contentedly, and shrunk from everything that did not belong to the subordinate duties of the grade of the profession to which this costume is supposed to be appropriated. Yet both for profit and position he was more to be envied than most of those who sat within the bar, and whose weapon was supposed to be eloquence. He was a legal pluralist. His best appointment was that of counsel to the Treasury, or rather "Devil to the Attorney General"—by virtue of which he drew all informations for libel and indictments for treason, and

[1] Our legal literature has likewise been greatly indebted to the admirable works of Lord St. Leonards on "Vendors and Purchasers" and on "Powers."

[2] Dunning always wore stuff, except during the short time when he was Solicitor General. The two others were in the full lead long before they were clothed in silk. I myself led the Oxford Circuit in bombazeen for three years.

opened the pleadings in all Government prosecutions. Next he was counsel for the Bank of England, an office which, in the days of one pound notes, when there were numerous executions for forgery every Old Bailey Session, brought in enormous fees. He was likewise standing counsel for a number of other corporations and chartered companies, and being known to be a zealous churchman as well as good ecclesiastical lawyer, he had a general retainer from most of the Prelates, and Dean and Chapters in England. Erskine in all his glory never reached £10,000 a year; yet Abbott, "Leguleius quidam," is known in the year 1807, to have made a return to the income-tax of £8,026 5*s*. as the produce of his professional earnings in the preceding year, and he is supposed afterwards to have exceeded that amount.

I believe that he never addressed a jury in London in the whole course of his life. On the circuit he was now and then forced into the lead in spite of himself, from all the silk gowns being retained on the other side,—and on these occasions he did show the most marvelous inaptitude for the functions of an advocate, and almost always lost the verdict. This partly arose from his power of discrimination and soundness of understanding, which, enabling him to see the real merits of the cause on both sides, afterwards fitted him so well for being a Judge. I remember a Sergeant-at-law having brilliant success at the bar from always sincerely believing that his client was entitled to succeed, although when a Chief Justice, he proved without any exception, and beyond all comparison, the most indifferent Judge who has appeared in Westminster Hall in my time. Poor Abbott could not struggle with facts which were decisive against him, and if a well-founded legal objection was taken, recollecting the authorities on which it rested, he betrayed to the presiding Judge a consciousness that it was fatal. His physical defects were considerable, for he had a husky voice, a leaden eye, and an unmeaning countenance. Nor did he ever make us think only of his intellectual powers by any flight of imagination or ebullition of humor, or stroke of sarcasm. But that to which I chiefly ascribed his failure was a want of boldness arising from the recollection of his origin and his early occupations.

"He showed his blood." Erskine undoubtedly derived great advantage from recollecting that he was known to be the son of an Earl, descended from a royal stock. Johnson accounts for Lord Chatham's overpowering vehemence of manner from his having carried a pair of colors as a cornet of horse. Whether Abbott continued to think of the razor-case and pewter basin I know not; but certain it is there was a most unbecoming humility and self-abasement in his manner, which inclined people to value him as he seemed inclined to value himself. Called upon to move in his turn when sitting in court in term time, he always prefaced his motion with "I humbly thank your Lordship." I remember once when he began by making an abject apology for the liberty he was taking in contending that Lord Ellenborough had laid down some bad law at nisi prius, he was thus contemptuously reprimanded: "Proceed, Mr. Abbott, proceed; it is your right and your duty to argue that I misdirected the jury, if you think so."

He had apprehensions that he could not remain much longer stationary at the bar. He said to me that if he were sure of having the second brief in a cause he would never wish to have the first, but that he might be driven to hold the first if he could not have the second. Soon after this display of rising spirit he had a great opportunity of gaining distinction, for he was called upon to lead a very important Quo Warranto cause at Hereford, on which depended the right of returning to Parliament a member for a Welsh borough. But nothing could rouse him into energy, and he had a misgiving that the proper issue was not taken on the 7th replication to the 10th plea. When he had been addressing the Jury as leader for half an hour, a silly old barrister of the name of Rigby came into Court, and when he had listened for another half hour, believing all this was preliminary to Dauncey or Sergeant Williams acting the part of leader and explaining what the case really was about, he innocently whispered in my ear, "How long Abbott is in opening the pleadings in this case!" The verdict going against him, a new trial was to be moved for next term —when he had not the courage to make the motion himself but insisted that it should be made by Scarlett, of

the Northern Circuit, who was still practicing without the bar in a stuff gown like himself.

In 1808, when Mr. Justice Lawrence differed with Lord Ellenborough, and retired into the Common Pleas, Abbott had declined the offer of being made a Puisne Judge, on account of the diminution of income which the elevation would have occasioned to him—but soon after I joined the Circuit I found that he earnestly longed for the repose of the Bench, and he was much chagrined that his patron, Lord Eldon, did not renew the offer to him. Sir Egerton Brydges, who was still more in his confidence, thus writes: "For twenty years he worked at the bar with steady and progressive profit and fame, but with no sudden bursts and momentary blaze, till his health and spirits began to give way. I well remember, in the year 1815, his lamenting to me in a desponding tone that his eyesight was impaired, and that he had some thoughts of retiring altogether from the profession. I dissuaded him, and entreated him not to throw away all the advantages he had gained by a life of painful toil, at the very period when he might hope for *otium cum dignitate*. I left him with regret, and under the impression that his health and spirits were declining."

While in Court upon the Circuits he betrayed a languor which showed that he was sick of it, but in society, and in traveling from assize town to assize town, he was lively and agreeable. No one relished a good dinner more, although he never was guilty of any excess. He still filled the office of Attorney General in the Circuit Court, held at Monmouth, which I regularly opened as crier, holding the poker instead of a white wand; and being so deeply versed in all legal forms, he brought forth his mock charges against the delinquents whom he prosecuted with much solemnity and burlesque effect—so as for the moment to induce a belief that notwithstanding his habitual gravity, Nature intended him for a wag.[1]

[1] Before the public he was always afraid of approaching a jest lest his dignity might suffer, and in his book on *Shipping* he would not, without an apology, even introduce a translation of a passage from a foreign writer which might cause a smile: "If mice eat the cargo, and thereby occasion no small damage to the merchant, the master must make good the loss, because he is guilty of a fault; yet if he had cats on board he shall be excused (Roccus, 58) The rule and exception, *although bear-*

I ought to have mentioned that as early as the year 1795, he was so confident of increasing employment that he ventured to enter the holy state of matrimony, being united to Mary, eldest daughter of John Lamotte, Esq., a gentleman residing at Basildon.

There had been a mutual attachment between them some years before it was made known to her family, and he had received as a *gage d'amour* from her, a lock of her hair. This revived his poetical ardor, and in the midst of Declarations, Demurrers, and Surrebutters, he *drew and settled*—

"THE ANSWER OF A LOCK OF HAIR TO THE INQUIRIES OF ITS FORMER MISTRESS."

The reader may like to have two or three of the stanzas (or counts) as *a precedent:*

"Since first I left my parent stock,
How strangely alter'd is my state!
No longer now a flowing lock,
With graceful pride elate,
Upon the floating gale I rise
To catch some wanton rover's eyes.

"But close entwin'd in artful braid,
And round beset with burnish'd gold,
Against a beating bosom laid,
An office now I hold:
New powers assume, new aid impart,
And form the bulwark of a heart."

The Lock goes on to describe a great discovery it had made while guarding the heart of her lover:

"For in this heart's most sacred cell,
By love enthron'd, array'd in grace,
I saw a fair enchantress dwell
The sovereign of the place:
And as she smil'd her power to view,
I straight my former mistress knew.

"Then, lady, cease your tender fears:
Be doubt dismiss'd! Adieu to care!
For sure this heart through endless years
Allegiance true will bear,
Since I all outward foes withstand,
And you the powers within command."

It is said that while still practicing as a special pleader under the bar he at last ventured to mention the pro-

ing somewhat of a ludicrous air, furnish a good illustration of the general principle."

posal to the lady's father. The old gentleman asking him "for a sight of his rent-roll," not yet being able to boast of "a rood of ground in Westminster Hall," he exclaimed, "Behold my books and my pupils."

The marriage took place with her father's consent, and proved most auspicious. The married couple lived together harmoniously and happily for many years, although of very different dispositions. While he was remarkably plain and simple in his attire, she was fond of finery, and according to the prevailing fashion, she habitually heightened her complexion with a thick veneering of carmine. So little suspicious was he on such subjects that I doubt whether he did not exultingly say to himself, "her color comes and goes." Once while paying me a visit in my chambers, in Paper Buildings, the walls of which were of old dark oak wainscot, he said, "Now, if my wife had these chambers, she would mmediately *paint* them, and I should like them the better for it."

In the collection of his letters intrusted to me I find only one addressed to his wife, and this I have great pleasure in copying for my readers, as it places him in a very amiable point of view. Some years after his marriage, when he had been blessed with two hopeful children, being at Shrewsbury upon the Circuit, he thus addressed her:—

"Shrewsbury, March 27th, 1798.

"MY DEAREST LOVE,

"I have just received and read your kind letter, which I had been expecting near half an hour. The inhabitants of any country but this would be astonished to hear that a letter can be received at the distance of 166 miles on the day after its date, and its arrival calculated within a few minutes.[1] As the invention of *paper* has now ceased to be a theme of rejoicing among poetical lovers, I recommend them to adopt the subject of *mail coaches*. They have only to call a turnpike road a velvet lawn, and change a scarlet coat into a rosy mantle, and they may describe the vehicle and its journey in all

[1] The rapidity of communication by the small coach, then lately established, so much exciting his astonishment, what would he have said had he lived to see *Railroads* and the *Electric Telegraph*?

the glowing colors of the radiant chariot of the God of Day. And that no gentleman or lady may despair of success in attempting to handle this new subject, I have taken the pains to write a few lines, which a person of tolerable ingenuity may work out into a volume :—

> In rosy mantle clad, the God of Day
> O'er heaven's broad turnpike wins his easy way;
> Yet soon as envious Night puts out his fires,
> The lazy deity to rest retires.
> But sure *his* robes with brighter crimson glow,
> Who guides the mail-coach through the realms below:
> And greater *he* who, fearless of the night,
> Drives in the dark as fast as in the light.
> Sweet is the genial warmth from heaven above;
> But sweeter are the words of absent love.
> Then cease, ye bards, to sing Apollo's praise,
> And let mail-coachmen only fill your lays.'

"You see my verses are very stiff, but recollect that husbands deal more in truth than in poetry. In truth then I am very happy to hear that you, my dearest Mary, and our beloved little John, are so much better, and in truth I am very happy to think that the circuit is almost over, and that in a few days I shall embrace you both. Unless I am detained beyond my expectation, I shall certainly have the pleasure of dining with you on Monday. Indeed I hope to get to Maidenhead on Sunday afternoon, and there step into one of the Bath coaches that arrive in town about eleven at night. I have brought a box of Shrewsbury cakes to treat the young gentleman when he behaves well after dinner.

"Adieu, my dearest Mary,
"Your faithful and affectionate husband,
"C. ABBOTT."

The following verses, which I find in his handwriting, were probably inclosed in a letter from him to Mrs. Abbott, while on the Circuit at Hereford :—

> "In the noise of the bar and the crowds of the hall,
> Tho' destined still longer to move,
> Let my thoughts wander home, and my memory recall
> The dear pleasures of beauty and love.
>
> "The soft looks of my girl, the sweet voice of my boy,
> Their antics, their hobbies, their sports;
> How the houses he builds her quick fingers destroy,
> And with kisses his pardon she courts.

"With eyes full of tenderness, pleasure, and pride,
The fond mother sits watching their play;
Or turns, if I look not, my dullness to chide,
And invites me like them to be gay.

"She invites to be gay, and I yield to her voice,
And my toils and my sorrows forget;
In her beauty, her sweetness, her kindness rejoice
And hallow the day that we met.

"Full bright were her charms in the bloom of her life
When I walked down the church by her side:
And, five years past over, I now find the wife
More lovely and fair than the bride.

Hereford, Aug. 6, 1800."

His affection for her was warmly returned, and she continued very tenderly attached to him. Shortly before his assumption of the ermine, she expressed to me the deep anxiety she felt from a weakness in his eyes. discontent with the tardiness of Eldon in fulfilling the promise to make him a Judge, and the pleasure she should have in consenting to his retirement from the profession altogether, if this would contribute to his comfort. They had lived ever since their marriage in a small house in Queen Square, Bloomsbury, giving a dinner to a few lawyers now and then,[1] and seeing no other company. He always contributed a dish to his own dinner table; for passing the fishmonger's on his way to Westminster, he daily called there and sent home what was freshest, nicest, and cheapest—trusting all the rest to her. Their union was blessed with four children—two sons and two daughters, and the whole household was ever remarkable for all that is excellent and amiable.

On the resignation of Mr. Justice Chambre, it was thought that Abbott's well-known desire to be made a Judge would have been gratified; but James Allan Park had been conducting very successfully some Government prosecutions on the Northern Circuit, to which much importance was attached, and his claims were pressed upon the Chancellor so importunately by Lord Sidmouth, that they could not be resisted. Abbott and his family were deeply disappointed, and his health then rapidly declining, there were serious apprehensions that he would

[1] One of the wise *saws* which I have heard him recite was, "A good dinner, given to guests judiciously selected, is money well spent."

not be able to attend the fatigue of bar practice any longer, and that he must retire upon the decent competence which he had acquired. It is said that he himself was deliberating between Canterbury and Oxford as his retreat, and that he had fixed upon the latter city, where he had always passed his time agreeably, whereas the recollections of the former were not the unmixed "pleasures of memory."

CHAPTER LIII.

CONTINUATION OF THE LIFE OF LORD TENTERDEN TILL HE WAS ELEVATED TO THE PEERAGE.

OPPORTUNELY another vacancy in the Court of Common Pleas soon after arose from the sudden death of Mr. Justice Heath, who, considerably turned of eighty, made good his oft-declared resolution "to die in harness."[1] Abbott was named to succeed him, and being obliged to submit to the degree of Sergeant-at-Law, he took the same motto which he had modestly adopted for his shield when he first indulged his fancy in choosing armorial bearings—LABORE.

The following letter was written by him in answer to congratulations from his old school-fellow—but it cannot be trusted as disclosing the whole truth; for he was ever unwilling to breathe any complaint against Lord Eldon, even when he thought himself deeply aggrieved by the selfishness of his patron:—

"Sergeant's Inn, Feb. 15th, 1816.

"MY DEAR FRIEND,

"I have felt highly gratified by the receipt of your kind letter and the warmth of your congratulations on my promotion to the Bench. I can never forget how much my present station is owing to your early friendship. The great object of my desire and ambition is now attained: it has been attained at a time when I had begun to be solicitous about it, as well on account of my advancing age as of a complaint that has for some months affected my eyelids and made reading by candle-light very inconvenient. The comparative leisure I now enjoy has, I think, already been attended with some beneficial effect and an abatement of the complaint. If the offer had not come now, it might have come too

[1] Another peculiarity about him was, that he never would submit to be knighted; being likewise resolved to die, as he did, "JOHN HEATH, Esq."

late; if it had come much sooner, pecuniary considerations would not have allowed me to accept it. But, like all other men who have obtained the object of their pursuit, I am now beginning to feel the difficulties that belong to it—to tremble lest I should be found unequal to the discharge of the duties of my station from want of learning, or talents, or temper, or lest the *res angusta domi* should not enable me to keep up the outward state that so high a rank in society requires, without injury to my family. These difficulties, small at a distance, like all others, now appear large to my view—the last of them larger, perhaps, than it ought, though the transition from an income exceeding present calls and daily flowing in, to one receivable at stated periods and of which the sufficiency is not quite certain, is attended with very unpleasant sensations. The employment of the mind, however, so far at least as my very short acquaintance with it enables me to judge, is far more agreeable. The search after truth is much more pleasant than the search after arguments. Some time may also be allowed to those studies which are the food of youth and the solace of age, but to which a man actively engaged in the profession of the law can only give an occasional and almost stolen glance. And some time may be allowed, too, for the discharge of the duties of domestic life, for the calls and the pleasures of friendship, and for that still more important task, the preparation for another world, to which we are all hastening. I have been told that some persons, on their promotion to the Bench, have found their time hang heavy on their hands; but I cannot think this will ever be my own case.

"I have another subject of congratulation, for I am to go the Home Circuit, which I shall not have another opportunity of doing for many years. C. Willyams has promised to be at Maidstone during the assizes. I hope he will not be the only old friend I shall meet there.[1]

"With best respects to Lady Brydges,

"I remain,

"My dear Sir Egerton,

"Your very faithful and affectionate friend,

"C. ABBOTT

[1] The vision of his fellow townsmen coming over from Canterbury to see him in the Crown Court, habited in scarlet and ermine, was about to be fulfilled.

He sat for a very short time as Judge in the Court of Common Pleas; but not a word which fell from him there has been recorded, and had he remained there he should probably have known little more of him than the dates of his appointment and of his death in "*Beatson's Political Index.*" But he was unexpectedly transferred to another sphere, where he gained himself a brilliant and a lasting reputation. Of this change he gives an account in the following letter:—

"Queen Square, May 5th, 1816.

"MY DEAR SIR EGERTON,

"You have probably been already informed that I have been removed from the Common Pleas to the King's Bench. The change was greatly against my personal wishes on account of the very great difference in the labor of the two situations, which I estimate at not less than 400 hours in a year. I had hoped to pass the remainder of my life in a situation of comparative ease and rest; but the change was pressed upon me in a way that I could not resist, though very unwilling to be flattered out of a comfortable seat. I hope you will not think I have done wrong.

"I remain,
"My dear Sir Egerton,
"Yours most sincerely,
"C. ABBOTT."

In his DIARY, begun November 3d, 1822, but taking a retrospect of his judicial life, he explains that the true reason of his removal was that Lord Eldon wished to make a Judge of Burrough, who, from age and other defects, was not producible in the King's Bench, but might pass muster in the Common Pleas. Having stated how he at first refused and how Lord Ellenborough pressed him to agree, he proceeds: "Upon this I went to Lord Chief Justice Gibbs, at his house at Hayes, in Kent, to consult him. I spoke of the state of my eyes. He said, 'If a higher situation were offered to you, would you refuse it on that account?' I answered, 'I should not think myself justified towards my family in doing so, but my own ambition is quite satisfied' (as in truth it was). He replied, 'Then you must not let that

excuse prevent your removal.' After some further conference, in the course of which he expressed himself with great kindness in regard to losing my assistance in the Common Pleas, it was resolved that I should remove, and upon my return from Hayes I communicated to the Lord Chancellor that I was willing to remove. This account of my removal to the King's Bench may serve as an example of the maxim that to do right is the greatest wisdom—even the greatest worldly wisdom. It was right that I should remove into the King's Bench, and I ought to have done so at the first proposal from the Lord Chancellor; but I preferred Gibbs, C. J., to Lord Ellenborough, as I had a right to do from long acquaintance and many acts of kindness. I preferred my ease to the wish of the Chancellor, for I might have understood his proposal to contain his wish, though he would not tell me so. This I had no right to do, for I owed everything to him and his kindness. As soon as I removed I felt satisfied with myself, though I may truly say I did not by any means expect the consequence that followed two years and a half afterwards. But if I had not removed into the King's Bench, I think it certain that I should not have been placed at the head of that Court."

On Friday, the 3d of May, 1816, Mr. Justice Abbott took his seat in the Court of King's Bench along with Lord Ellenborough, Mr. Justice Bayley, and Mr. Justice Holroyd [1]—and he officiated there as a puisne Judge till Michaelmas Term, 1818. Never having read at *Nisi Prius*, and having been accustomed to attend to detached points as they arose, rather than to take a broad and comprehensive view of the merits of the cause, he at first occasioned considerable disappointment among those who were prepared to admire him; but he gradually and steadily improved, and before the expiration of the second year he gave decided proof of the highest judicial excellence. The complaints made against him were, that in spite of efforts at self-control, his manner to *boring* barristers was sometimes snappish; that he showed too much deference to the Chief Justice; above all, that in some political prosecutions, although his de-

[1] 6 Taunton, 516; 5 Maule and Selwyn, 2.

meanor was always decorous, and he said nothing that could be laid hold of as misdirection or misrepresentation, he betrayed an anxiety to obtain a verdict for the Crown. Lord Ellenborough's health was seriously declining, and in those days there was still a strong disposition in the Government to repress free discussion and to preserve tranquillity by a very vigorous enforcement of the criminal law—a disposition which soon after ceased, when Peel became Home Secretary and Copley Attorney General. The malicious insinuated that an aspiring puisne was trying for the Collar of SS by "a mixture of good and evil arts." He himself was so profoundly reserved that he might have been acting upon this plan without having disclosed it to his own mind.

I happened to be much in his company during the long vacation of 1816. In consequence of a serious illness, then being a desolate bachelor, I had retired to a lonely cottage at Bognor, on the coast of Sussex, and Mr. Justice Abbott taking up his residence there with his family, he was exceedingly kind to me. In our walks he talked of literature much more than of law, and he would beautifully recite long passages from the Greek and Latin classics, as well as from Shakspeare, Milton, and Dryden. For all modern English poetry he expressed infinite contempt. When I ventured to stand up for brilliant passages in Byron, he only exclaimed—

> "Unus et alter
> Assuitur pannus!"

Yet he was himself still sometimes inspired by the Muse. While we remained at Bognor, the Channel was visited by a tremendous tempest, which he celebrated by the following

"*Sonnet to the Southwest Gale.*"

> "Perturbed leader of the restless tide,
> That from the broad Atlantic swept away,
> Here mingles with the clouds its lofty spray
> As if it would the narrow limits chide
> That Albion from her neighbor Gaul divide—
> Relentless SOUTHWEST! curb thy angry sway,
> Ere yet the swelling billows' fierce array
> Close o'er yon shattered bark's devoted side!
> The melancholy signal sounds in vain;
> The crew, desponding, eye the distant shore;

> Calm, ere they perish, calm the troubled main,
> The placid sea and sky serene restore;
> And be thou welcom'd in the poet's prayer,
> God of the balmy gale and genial air!"

In the autumn of 1818 there was a great excitement in the legal world. Lord Ellenborough had had a paralytic seizure, and it was certain that he could never sit again. Sir Samuel Shepherd, the Attorney General, although an excellent lawyer as well as a very able and honorable man, was so deaf that he could not with propriety accept any judicial office which required him to listen to parol evidence, or to *vivâ voce* discussion. Sir Robert Giffard had been recently promoted to be Solicitor General, from a rather obscure position in the profession, and he could not as yet with propriety be placed at the head of the common law. Sir Vicary Gibbs was looked to, having a great legal reputation, and being in the highest favor with the Government; for from Attorney General, he had successively been made a Puisne Judge, Chief Baron of the Exchequer, and Chief Justice of the Common Pleas; but the hand of death was now upon him. Who was to be Chief Justice of England? Lord Ellenborough strongly recommended Mr. Sergeant Lens, a most honorable man, an accomplished scholar, and a very pretty lawyer—and he was for some time the favorite.

I well remember one morning in the end of October, 1818, about a fortnight after Lord Ellenborough's death, when the puisne Judges of the King's Bench were assembled at Sergeants' Inn for the hearing of special arguments in what was called the "Three Cornered Court," it was announced that Abbott was certainly to be Chief Justice. Nothing discredited the assertion except that his own manner was tranquil and listless, and that he was observed several times to yawn, seemingly against his will. Some alleged that the news might be true, as he was only acting a part—and others, who knew him better, explained what they beheld by his habitual want of animal spirits, and the collapse after long and painful anxiety.

At the rising of the Court he accepted our congratulations on his appointment, and on the 4th of Novem-

ber, fourteen years to a day before his own death, he actually appeared in Court at Westminster, wearing the Chief Justice's golden chain.

His family expected to see at the same time his brows encircled with a coronet, for ever since Lord Mansfield's elevation in 1756, the Chief Justice of the King's Bench had been ennobled on his appointment. This distinction was withheld from Chief Justice Abbott for nine years; but without such adventitious aid he won the highest respect of the public (as Holt had done) by the admirable discharge of his judicial duties.

The following letter from him to Sir Egerton Brydges, who had calculated upon a peerage being at once conferred upon him, fully explains what then took place, and his own views upon the subject:—

"Russell Square, Jan. 17th, 1819.

"MY DEAR SIR EGERTON,

"I thank you most heartily for your very affectionate letter, and assure you I do not doubt the sincerity of your warm and kind expressions. It is well that you waited no longer in expectation of seeing my promotion to the peerage announced. Such an event is neither probable nor desirable. When the Lord Chancellor told me he was authorized by the Prince Regent to propose the office of Chief Justice to me, he said he was also directed by his Royal Highness to acquaint me that it was not the intention of his Royal Highness to confer a peerage upon the person who should take the office, whoever he might be. My answer was, that the latter part of his sentence relieved me from the only difficulty I could have had in answering the first. I was willing to take the office, but neither the state of my fortune nor that of the office would allow me to take a peerage, according to my views of expediency and justice to my family. All the offices in the gift of the Chief Justice, and which make his office a means of providing for a family, are now held by the families of my predecessors upon lives which I can never expect to survive. My emoluments will fall far short of two-thirds of those which Lord Ellenborough enjoyed for many years past. Under such circumstances, I should be most unwilling to accept an hereditary honor, and I think myself fortunate in

having a family, of which no one member is desirous of such a distinction. I have written so much about myself and my own situation, because I know that you wish to hear of them. It is a subject of deep regret to me that I receive your congratulations on my promotion from a distant country. . . . . . .

"Wherever you are and whatever you do, may health and comfort attend you!"

The far happiest part of my life as an advocate I passed under the auspices of Chief Justice Abbott. From being a puisne, it was some time before he acquired the ascendency and the *prestige* which, for the due administration of justice, the Chief ought to enjoy—and while Best remained a member of the Court, he frequently obstructed the march of business. But when this very amiable and eloquent, although not very logical, Judge had prevailed upon the Prince Regent to make him Chief Justice of the Common Pleas, the King's Bench became the *beau idéal* of a court of justice. Best was succeeded by Littledale, one of the most acute, learned, and simple-minded of men. For the senior puisne we had Bayley. He did not talk very wisely on literature or on the affairs of life, but the whole of the common law of this realm he carried in his head and in seven little red books. These accompanied him day and night; in these every reported case was regularly posted, and in there, by a sort of magic, he could at all times instantaneously turn up the authorities required. The remaining puisne was Holroyd, who was absolutely born with a genius for law, and was not only acquainted with all that had ever been said or written on the subject, but reasoned most scientifically and beautifully upon every point of law which he touched, and, notwithstanding his husky voice and sodden features, as often as he spoke he delighted all who were capable of appreciating his rare excellence. Before such men there was no pretense for being lengthy or importunate. Every point made by counsel was understood in a moment, the application of every authority was discovered at a glance, the counsel saw when he might sit down, his case being safe, and when he might sit down, all change of success for his client being at an end. I have practiced at the bar when no case was secure, no

case was desperate, and when, good points being over-ruled, for the sake of justice it was necessary that bad points should be taken; but during that golden age law and reason prevailed—the result was confidently anticipated by the knowing before the argument began—and the judgment was approved by all who heard it pronounced—including the vanquished party. Before such a tribunal the advocate becomes dearer to himself by preserving his own esteem, and feels himself to be a minister of justice, instead of a declaimer, a trickster, or a bully. I do not believe that so much important business was ever done so rapidly and so well before any other Court that ever sat in any age or country.

Although the puisnes deserve all the praises that I have bestowed upon them, yet the principal merit is, no doubt, due to Abbott, and no one of them could have played his part so well. He had more knowledge of mankind than any of them, and he was more skillful as a moderator in forensic disputation. He was not only ever anxious, for his own credit, that the business of the Court should be despatched, but he had a genuine love of law and of justice, which made him constantly solicitous that every case should be decided properly. His pasty face became irradiated and his dim eye sparkled if a new and important question of law was raised; and he took more interest in its decision than the counsel whose fame depended upon the result. Though a most faithful trustee of the public time, insomuch that he thought any waste of it was a crime and a sin, he showed no marks of impatience, however long an examination or a speech might be, if he really believed that it assisted in the investigation of truth, and might properly influence the jury in coming to a right verdict.

The language in which he clothed his statements and decisions was always correct, succinct, idiomatic, and appropriate, and he would not patiently endure conceit or affectation in the language of others. He was particularly irate if a common *shop* was called a *warehouse* by its owner, or the *shopman* dubbed himself an *assistant*. A gentleman pressing into a crowded court, complained that he could not get to his counsel. *Lord Tenterden:* "What are you, Sir?" *Gentleman:* "My Lord, I am

the plaintiff's solicitor." *Lord Tenterden:* "We know nothing of *solicitors* here, Sir. Had you been in the respectable rank of an *attorney*, I should have ordered room to be made for you."[1] A country apothecary, in answer to some plain question, using very unnecessarily high-sounding medical phraseology, the Chief Justice roared out, "Speak English, Sir, if you can, or I must swear an interpreter."

There were heavy complaints against him at *nisi prius*, that when a fact had been proved by one witness, he reprimanded the counsel for calling another to prove it over again—that he was angry when a witness was cross-examined as to the facts sworn by him when examined in chief—and that he appealed to the evidence he had written down in his note-book as if it were a special verdict upon which the cause was to be decided—forgetting that everything might depend upon the impression made by the evidence upon the minds of the jury and the credit they might give to the witnesses. There is no denying that occasionally he was rather irritable and peevish, and showed in his manner a want of good taste and of good breeding. When a third or fourth counsel rose to address him, following able leaders, he would sneeringly exclaim, "I suppose we are now to hear what is to be said *on the other side*," although it might be the maiden effort of a trembling junior; and he too often forgot the remark of Curran, when reproached for too much forbearance on becoming Master of the Rolls, "I do not like to appear in the character of a drill-sergeant, with my cane rapping the knuckles of a private, when I am raised from the ranks to be a colonel."

Although he behaved very courteously to the other puisnes, he could not always conceal dislike to brother Best. That learned Judge, in trying a defendant for a blasphemous libel, had thrice fined him for very improper language in addressing the jury—£20 for saying to the Judge when reproved, "My Lord, if you have

[1] When in 1850 I returned to Westminster Hall, after a long absence of nine years, I found that the *Attorneys* had almost all gown into SOLICITORS; and the more expedient course now would probably be entirely to abolish the word *attorney*, although it denotes the representative character of the forensic agent much more appropriately than the favorite word *Solicitor*.

your dungeon ready, I will give you the key"—£40 for saying that "the Scriptures were ancient tracts containing sentiments, stories, and representations totally derogatory to the honor of God, destructive to pure principles of morality, and opposed to the best interests of society' —and the like sum of £40 for saying very irreverently, but one would have thought less culpably, "The Bishops are generally sceptics." A motion being made for a new trial on the ground that the defendant had been improperly interrupted in making his defense, Abbott, C. J., recognized the power of fining for a contempt, and intimated an opinion that the exercise of it on this occasion had not really debarred the defendant from using any arguments which could have availed him, but sneered at the tariff of pecuniary mulcts, and pretty plainly intimated that he himself should have pursued a different course.[1]

The only grave fault which could be justly imputed to Chief Justice Abbott was, that he allowed himself to fall under the dominion of a favorite. A judge is in danger of having such a charge brought against him from one counsel in his court being much more employed than any other, and being almost always retained by plaintiffs, who in a large proportion of causes succeed. This may prove a palliation for Abbott, but by no means an entire exculpation. Sir James Scarlett had been his senior at the bar, when they were in the same cause on the same side, had often snubbed him, without permitting him to examine an important witness, and hardly even to open his mouth upon a point of law. The timid junior, become Chief Justice, still looked up to his old leader with dread, was afraid of offending him, and was always delighted when he could decide in his favor. The most serious evil arising from this ascendency was when Scarlett conducted criminal prosecutions before Abbott, and, above all, prosecutions for conspiracy. In a long sequence of these in which there had been convictions, the Court granted new trials, on the ground that the verdict was not supported by the evidence.

[1] Rex *v.* Davison, 4 B. and A. 33. It should be noted that Best, who, though a passionate, was an exceedingly good-natured man, had himself remitted the fines before the Court rose.

"This acute and dexterous lawyer," it has been said, "used to confirm his influence by well-timed delicate flattery. Having moved for a new trial for misdirection, he prefaced his motion with the explanatory remark that he had taken an accurate note of the summing up, which he only did when he conceived there was a misconception on the part of the Judge—which did not happen with regard to his Lordship three times a year. The Chief Justice was evidently gratified, and observed with a smile, 'I fear, Mr. Scarlett, that you do not take notes as often as you ought to do.'"[1]

The bar evinced a jealous sense of the ascendency of the favorite. On one occasion when, with the seeming approbation of the Chief Justice, Scarlett had said, in an altercation with Mr. Adolphus, who practiced chiefly in the Criminal Courts, "There is a difference between the practice here and at the Old Bailey;" his antagonist retorted, to the delight of his brethren, "I know there is. The Judge there rules the advocate; here, the advocate rules the Judge."

The following letter from the Chief Justice to Sir Egerton Brydges, after some remarks upon Lord Eldon, Lord Giffard (then Attorney General), and Lord Lyndhurst (then Solicitor General), enters with extraordinary freedom into his own judicial character:—

"The Chancellor, who has done more work than any living lawyer, perhaps than any deceased, is, I verily believe, and has for some time been, desirous of resigning, but kept in his place from the difficulty of filling it up, and from the King's personal desire. The present Attorney General will probably be his successor: he is a good lawyer and a sound-headed man; warm rather than vigorous, and without dignity of person or manner. Yet I think he is the fittest man living to succeed one for whom a successor must soon be found—though perhaps an equal never will be. The Solicitor General is probably very little known to you, though I think you have sat with him in the House of Commons. He has less learning than the Attorney General, but a much better person, countenance, and manner; a good head and a kind heart, and not deficient in learning. I

[1] Townsend's Lives, ii. 263.

suppose he will soon fill one of our high offices in the law.

"Of myself I have really scarce any thing to say. My health is good, and my spirits are generally good. I go through my work as I can, though certainly not without some anxieties and some crosses. I scarcely know whether the extreme caution that the prevailing spirit of cavil and misrepresentation imposes on a Judge be fortunate or unfortunate for his future reputation—it is certainly unfortunate for his comfort: a bridle in the mouth with a sharp curb is not a very pleasant attire, yet in these times at least it is very necessary. I generally study to say as little as possible from the Bench, and to confine myself closely to the very point before me, not hazarding allusions or illustrations in which I know much wiser men have often failed. How far I succeed others may better judge. I am sure many of my decisions, when I read them in the Reports, are at least as dry and jejune as may well be tolerated. Lord Mansfield indulged himself in allusions and illustrations: his opinions are said to have produced a great effect on the majority of those who heard him; they are not well reported by Burrow—at least, few of them read well to a lawyer. His taste for illustration was not fortunate. His opinion is often right when his illustrations are not right. Dr. Jackson (Dean of Christ Church) knew him well and privately, and often talked with me about him. We agreed upon his talents and character. They were plausible and showy, and not unsuited to the age. He certainly did much for the mercantile law, and not a little for the law in general, by breaking down the barrier of what are usually called forms; but in this he sometimes went too far. The preservation of forms, however unpopular, is of the essence of all establishments—of the judicial in particular—for if Judges disregard them, they become authors and not expounders of law. The great art of a lawyer is to understand them. If a Judge does not understand them, he will violate the law in a few instances by breaking them; and if of a cautious temper, do injustice in many by a mistaken adherence to their supposed effect: the latter has been the most common error. The less a Judge knows of special

pleading, the more nonsuits take place under his direction. Buller told me so many years ago, and experience has shown the truth of his assertion. You must forgive all this from an old Special Pleader."

I have anxiously looked through this Chief Justice's judgments with a view to select some which might interest the general reader, but have met with sad disappointment. They are all excellent for the occasion, but I find none that are very striking. It so happened, that while he presided in the Court of King's Bench there were hardly any State trials, and no great constitutional question arose, such as "general warrants," or "the right of juries to consider the question of libel or no libel," or "whether a court of law is to limit the privileges of the two Houses of Parliament." With admirable tact and discretion he avoided any attempt to extend the jurisdiction of his own Court; and he never once got into collision with any other Court or any other authority in the State. He was cautious likewise in restraining the prerogative writs to their proper purposes.

A motion being made before him for a prohibition to the Lord Chancellor sitting in bankruptcy; after showing that upon the facts disclosed, the Lord Chancellor had done nothing amiss, he added, "We wish not to be understood as giving any sanction to the supposed authority of this Court to direct such a prohibition. It will be time enough to decide the question when it arises—if ever it shall arise, which is not very probable, as no such question has arisen since the institution of proceedings in bankruptcy—a period little short of three hundred years. If ever the question shall arise, the Court, whose assistance may be invoked to correct an excess of jurisdiction in another, will without doubt take care not to exceed its own."[1]

I know not that I can offer a fairer specimen of his judgments than that given by him in Blundell *v.* Caterall, where the question arose, whether there be a common law right for all the King's subjects to bathe in the sea; and, as incident thereto, of everywhere crossing the sea-shore on foot or in bathing-machines for that purpose. Best, J., strenuously supported the right, and thus

[1] Ex parte Cowan, 3 B. and A. 123.

was he answered: *Abbott, C. J.*: "I have considered this case with very great attention, from the respect I entertain for the opinion of my brother Best, though I had no doubt upon the question when it was first presented to me; nor did the defendant's counsel raise any doubt in my mind by his learned and ingenious argument. This is an action of trespass brought against the defendant for passing with carriages from some place above highwater-mark across that part of the shore which lies between the high and lowwater-mark, for the conveyance of persons to and from the water for the purpose of bathing. The plaintiff is the undoubted owner of the soil of this part of the shore, and has the exclusive right of fishing thereon with stake-nets. The defendant does not rely on any special custom or prescription for his justification, but insists on a common law right for all the King's subjects to bathe on the seashore, and to pass and repass over it for that purpose on foot, and with horses and carriages. Now, if such a common law right existed, there would probably be some mention of it in our books; but none is found in any book, ancient or modern. If the right exist now, it must have existed at all times; but we know that seabathing was, until a time comparatively modern, a matter of no frequent occurrence, and that the carriages, by which the practice has been facilitated and extended, are of very modern invention.

"There being no authority in favor of the affirmative of the question in the terms in which it is proposed, it has been placed in argument at the bar on a broader ground; and as the waters of the sea are open to the use of all persons for all lawful purposes, it has been contended, as a general proposition, that there must be an equally universal right of access to them for all such purposes over land, such as the plaintiff's, on which the alleged trespasses have been committed. If this could be established, the defendant must undoubtedly prevail, because bathing in the waters of the sea is, generally speaking, a lawful purpose. But in my opiniun there is no sufficient ground, either in authority or in reason, to support this general proposition, Bracton, in the passage referred to, speaks not of the waters of the sea gen-

erally, but of ports and navigable rivers; and as to ports, Lord Hale distinguishes between the interest of property and the interest of franchise; and says, that if A. hath the *ripa* or bank of the port, the King cannot grant liberty to unlade on the bank or *ripa* without his consent, unless custom hath made the liberty thereof free to all, as in many places it is. Now, such consent, as applied to the natural state of the *ripa* or bank, would be wholly unnecessary if any man had a right to land his goods on every part of the shore at his pleasure. If there be no general right to unlade merchandise on the shore, there can be no right to traverse the shore with carriages or otherwise for the purpose of unlading; and consequently, the general proposition to which I have alluded cannot be maintained as a legitimate conclusion from the general right to navigate the water. One of the topics urged at the bar in favor of this supposed right was that of public convenience. Public convenience, however, is in all cases to be viewed with a due regard to private property, the protection whereof is one of the distinguishing characteristics of the law of England. It is true, that property of the description of the present is in general of little value to its owner; but I do not know how that little is to be respected, and still less how it is ever to be increased, if such a general right be established. How are stake-nets to be lawfully fixed on the beach? By what law can any wharf or quay be made? These, in order to be useful, must be below the high-water mark. In some parts of the coast where the ground is nearly level the tide ebbs to a great distance, and leaves dry very considerable tracts of land. In such situations thousands of acres have, at different times, been gained from the sea by embankments, and been converted to pasture or tillage. But how could such improvements have been made, or how can they be made hereafter, without the destruction or infringement of this supposed right? And it is to be observed that wharfs, quays, and embankments, and in-takes from the sea, are matters of public as well as private benefit. I am not aware of any usage in this matter sufficiently extensive or uniform to be the foundation of a judicial decision. In many places, doubtless, nothing is paid to the owner

of the shore for leave to traverse it. In many places the King retains his ownership, and it is not probable that he should offer any obstruction to those who, for recreation, wish to walk, or ride, or drive along the sands left by the receding tide. Of private owners, some may not have thought it worth while to advance any claim or opposition; others may have had too much discretion to put their title to the soil to the hazard of a trial by an unpopular claim to a matter of little value; others, and probably the greater number, may have derived or expected so much benefit from the increased value given to their inclosed land by the erection of houses and the resort of company, that their own interest may have induced them to acquiesce in, and even to encourage the practice as a matter indirectly profitable to themselves. Many of those who reside in the vicinity of inland wastes and commons walk and ride on horseback in all directions over them for health and amusement, and sometimes, even in carriages, deviate from the public paths into those parts which may be so traversed with safety. In the neighborhood of some frequented watering-places this practice prevails to a very great degree; yet no one ever thought that any right existed in favor of this enjoyment, or that any justification could be pleaded to an action at the suit of the owner of the soil. The defendant finally says, that the right may be considered as confined to those localities where it can be exercised without actual prejudice to the owner of the shore, and subject to all modes of present use or future improvement on his part. No instance of any public right so limited and qualified is to be found. Every public right to be exercised over the land of an individual is *pro tanto* a diminution of his private rights and enjoyments, both present and future, so far as they may at any time interfere with or obstruct the public right. But shall the owner of the soil be allowed to bring an action against any person who may drive a carriage or walk along any part of the sea-shore, although not the minutest injury is done to the owner? The law has provided suitable checks to frivolous and vexatious suits, and experience shows that the owners of the shore do not trouble themselves or others about

such trifles. But where one man endeavors to make his own special profit by conveying persons over the soil of another, and claims a public right to do so, as in the present case, it does seem to me that he has not any just reason to complain, if the owner of the soil shall insist on participating in the profit, and endeavor to preserve the evidence of the private right which has belonged to him and his ancestors. For these reasons I am of opinion that there is not any such common-law right as the defendant has claimed; and my brothers Bayley and Holroyd agreeing with me, there must be judgment for the Plaintiff." [1]

In the following judgment Chief Justice Abbott held that the author or publisher of an immoral book cannot maintain an action for pirating it. " This was an action brought for the purpose of recovering a compensation in damages for the loss alleged to have been sustained from the publication of a copy of a book which had been first published by the plaintiff. At the trial it appeared that the work professed to be a history of the amours of a courtezan, that it contained in some parts matter highly indecent, and in others matter of a slanderous nature upon persons whose supposed adventures it narrated. The question, then, is whether the first publisher can claim a compensation in damages for a loss sustained by an injury done to the sale of such a work. In order to establish such a claim he must in the first place show a right to sell, for if he has not that right, he cannot sustain any loss which the law will recognize by an injury to the sale. Now, I am certain no lawyer can say that the sale of each copy of this work is not an offense against the law. How, then, can we hold that by the first publication of such a work a right of action can be given against any person who afterwards publishes it? It is said that there is no decision of a court of law against the plaintiff's claim. But upon the plainest principles of the common law, founded as it is, where there are no authorities, upon common sense and justice, this action cannot be maintained. It would be a disgrace to the common law if a doubt could be entertained upon the subject; but I think no doubt can be entertained, and

[1] Blundell *v.* Catterall, 5 Barn and Ald. 268–316.

I want no authority for pronouncing such a judicial opinion."[1]

Thus he pointedly defended our peculiar doctrine of high treason, which constitutes the offense in the *intention*, but requires this intention to be manifested by an *act*. "The law has wisely provided (because the public safety requires it) that in cases of this kind which manifestly lead to the most extensive public evil, the intention shall constitute the crime; but the law has at the same time with equal wisdom provided (because the safety of individuals requires it) that the intention shall be manifested by some act tending towards the accomplishment of the criminal object."[2]

Although he saw more distinctly the evils than the benefits arising from the freedom of the press, he laid down the law of libel always with calmness and decorum. Soon after the ascension of George IV. a criminal information was filed by the Attorney General (not very discreetly) against the proprietor and printer of a newspaper for the following paragraph: "Attached as we sincerely and lawfully are to every interest connected with the Sovereign or any of his illustrious relatives, it is with the deepest concern we have to state that the malady under which his Majesty labors is of an alarming description, and may be considered hereditary. It is from authority we speak." At the trial before Abbott, C. J., at Guildhall, the counsel for the defendants admitted that the paragraph complained of imported that the King labored under insanity, and that this assertion was untrue, but insisted that the defendants believed the fact to be as they stated it, and that they were not criminally answerable, as there had previously been strong public rumors to the same effect.

Abbott, C. J.: "To assert falsely of his Majesty or of

[1] Stockdale *v.* Onwhyn, 5 Barn. and Cr. 175. This principle is perfectly sound, but there must be great difficulty in acting upon it. Judges and juries may be much divided as to whether the authors of such novels as "Tom Jones" and "Peregrine Pickle" ought to be allowed to maintain an action for pirating their works. Lord Eldon refused an injnnction against the piracy of a poem dedicated by Lord Byron to Walter Scott, on the ground of its being atheistical, although it is generally considered to be no more liable to that charge than "Paradise Lost."

[2] State Tr. vol. xxxiv.—Thistlewood's Case.

any other person that he labors under the infliction of mental derangement is a criminal act. It is an offense of a more aggravated nature to make an assertion concerning his Majesty than concerning a subject, by reason of the greater mischief which may thence arise. It is distinctly admitted by the counsel for the defendants that the statement in the libel was false in fact, although they allege that rumors to the same effect had been previously circulated in other newspapers. Here the writer of this article does not seem to found himself upon existing rumors, but purports to speak from authority; and inasmuch as it is now admitted that the fact did not exist, there could be no authority for the statement. In my opinion the publication is a libel calculated to vilify and scandalize his Majesty, and to bring him into contempt among his subjects. But you have a right to exercise your own judgment upon the publication, and I invite you to do so."

After the jury had retired about two hours, they returned into Court, and said they wished to have the opinion of the Lord Chief Justice " whether it was or was not necessary that there should be a malicious intention to constitute a libel?"

Abbott, C. J.: "The man who publishes slanderous matter in its nature calculated to defame and vilify another, must be presumed to have intended to do that which the publication is calculated to bring about, unless he can show the contrary, and it is for him to show the contrary.

The jury having retired for three hours, returned a verdict of GUILTY, but recommended the defendants to mercy. Brougham and Denman moved for a new trial on account of the Judge's direction, and more particularly for his having told the jury that they (the counsel) had admitted the statement in the libel to be *false in fact*, using that word to denote a criminal untruth; whereas they had only admitted the statement to be untrue, the defendants believing it to be true, and an untrue statement may be made with perfect innocence and good faith. Bayley and Holroyd having said that the direction was unexceptionable, Best added, " Whether a publication be t ue or false is not the subject of inquiry in

the trial of an information for a libel, but whether it be a mischievous or innocent paper. We are not called upon to decide whether the defendants would have been justified had the statement been true. But it must not be taken for granted that if such a dreadful affliction had happened to the country as the insanity of the King, the editor of a newspaper would be justified in publishing an account of it any time and in any manner that he thought proper. It is fit that the time and mode of such a communication should be determined on by those who are best able to provide against the effects of the agitation of public feeling which it is likely to produce. Such a communication rashly made, although true, might raise an inference of mischievous intention, for truth may be published maliciously."

Abbott, C. J.: "My learned brothers having delivered their opinion that nothing which fell from me in my address to the jury furnishes sufficient ground for granting a new trial, I will merely add that unless malicious intent may be inferred from the publication of the slander itself in a case where no evidence is given to rebut that inference, the reputation of all his Majesty's subjects, high and low, would be left without that protection which the law ought to extend to them. I will say further, with regard to the particular expression contained in this publication, that if any writer thinks proper to say that *he speaks from authority* when he informs his readers of a particular fact, and it shall turn out that the fact so asserted is untrue, I am of opinion that he who makes the assertion in such a form may be justly said to make a false assertion. I am not a sufficient casuist to say that to call it *an untrue assertion* would be a more proper form of expression."[1]

After the transfer of Best to preside in the Common Pleas there was hardly ever a difference of opinion among the Judges of the King's Bench, but strange to say, on one question which seems very plain and easy, they were divided equally, although all actuated by singleness of purpose to decide rightly. A gentleman residing in London hired of a public stable-keeper a pair of horses to draw his carriage for a day, and the owner of the

[1] Rex *v.* Harvey and another, 2 Barn. and Cr. 257.

horses provided the driver. Through the negligence of the coachman in driving, the carriage struck a horse belonging to a stranger. The question was whether the owner of the carriage was liable to be sued for this injury? The Chief Justice, before whom the cause was tried, thought that he was not, and directed a nonsuit. On application to the Court to set aside the nonsuit, Bayley and Holroyd held that the driver was *pro hac vice* the servant of the owner of the carriage, although let for the day, with the horses, by the owner of the horses.

Abbott, C. J.: "I must own that I cannot perceive any substantial difference between hiring a pair of horses to draw my carriage about London for a day, and hiring them to draw it for a stage on a road I am traveling, the driver being in both cases furnished by the owner of the horses in the usual way, although in the one instance he is called a coachman and in the other a post-boy. Nor can I feel any substantial difference between hiring the horses to draw my own carriage on these occasions and hiring a carriage with them of their owner. If the temporary use and benefit of the horses will make the hirer answerable, and there being no reasonable distinction between hiring them with or without a carriage, must not the person who hires a hackney-coach to take him for a mile or other greater or less distance, or for an hour or longer time, be answerable for the conduct of the coachman? Must not the person who hires a wherry on the Thames be answerable for the conduct of the waterman? I believe the common sense of all men would be shocked if any one should affirm the hirer to be answerable in either of these cases."

Littledale, J., concurred in this opinion, and the nonsuit stood.[1]

Chief Justice Abbott in his addresses from the Bench never aimed at eloquence or epigram, but he showed

[1] Laugher *v.* Pointer, 5 B. and C. 547. By the Common Law Procedure Act, where the Judges are divided, the case now goes by appeal to a Court of Error. Lord Abinger, Chief Baron, afterwards ruled that the liability under such circumstances is not a question of law, and that it is for the jury to say whether the driver, when the accident happened, was the servant of the person who has taken the horses to hire, or has let them to hire. Brady *v.* Giles, 1 Moody and Robinson, 494.

himself master of a nervous style which rose in dignity with the occasion. In opening the commission for the trial of the Cato Street conspirators, a set of low, desperate men who had laid a plot to assassinate all the Cabinet Ministers, and then to seize upon the government, he thus cautioned the Grand Jury against incredulity on account of the improbability of the statements which might be made by the witnesses:—

"Such ulterior designs, if they shall appear to be of the nature to which I have alluded, and to relate to the usurpation of the government in opposition to the constituted authorities of the realm even for a season, will appear to the calm eye of sober reason to be wild and hopeless. But you, gentlemen, know that rash and evil-minded men, brooding over their bad designs, gradually lose sight of the difficulties that attend the accomplishment of their schemes, and magnify the advantage to be derived from them. And as it is the natural propensity of the vicious to think others no less vicious than themselves, those who form wicked plans of a public nature easily believe that they shall have numerous supporters, if they can manifest at once their designs and their power by striking some one important blow."

To prepare the minds of the Grand Jury for the evidence of spies and accomplices, he added—"This belief leads in some instances to a rash and hasty communication of the wicked purpose to others who are thought likely to adopt it and join in its execution, but who, in fact, are not prepared to do so, and thereby occasionally furnishes the means of detection. Dark and deep designs are seldom fully developed except to those who consent to become participators in them, and can therefore be seldom exposed and brought to light by the testimony of untainted witnesses. Such testimony is to be received on all occasions with great caution; it is to be carefully watched, deliberately weighed, and anxiously considered. He who acknowledges himself to have become a party to a guilty purpose does by that very acknowledgment depreciate his own personal character and credit. If, however, it should ever be laid down as a practical rule in the administration of justice that the testimony of accomplices should be rejected as incred-

ible, the most mischievous consequences must necessarily ensue; because it must not only happen that many heinous crimes must pass unpunished, but great encouragement will be given to bad men by withdrawing from their minds the fear of detection and punishment through the instrumentality of their partners in guilt, and thereby universal confidence will be substituted for that distrust of each other which naturally possesses men engaged in wicked projects, and which often operates as a restraint against the perpetration of offenses to which the co-operation of a multitude is required.

In passing sentence of death upon the prisoners, he thus moralized upon the same theme:—

"It has happened to you on the present occasion, as to many others before you, that the principal instruments by which you were brought to justice are persons who have partaken in your own guilty design. I trust that this circumstance will have its due weight in the consideration of all who shall become acquainted with your fate, and that they will ever for the sake of their own personal safety, if they cannot be influenced by any higher consideration, be induced to abstain from those evil combinations which have brought you into the melancholy situation in which you now stand. That Englishmen, laying aside the national character, should assemble to destroy in cold blood the lives of fifteen persons unknown to them, except from their having filled the highest offices in the state, is without example in the history of this country, and I hope will remain unparalleled for atrocity in all future times."

Our Chief Justice, however, tarnished the fame which he might have carried off without a shade from his dignified, impartial, and firm demeanor during these trials, by imprudently making an order that there should be no publication of any part of the proceedings till they were all concluded, and by fining the proprietor of a newspaper £500 for publishing an account of the first trial before the second had begun. The Courts upheld the power to make the order and to enforce it by fine, but such a mode of proceeding has never since been attempted, the sound opinion being that the delay of publication is not desirable, even if it could practically

be insured, and that the newspapers may be considered as indefinitely enlarging the dimensions of the Court so as to enable the whole nation to see and hear all that passes—between the arraignment of the prisoner and his condemnation or acquittal.

I ought to record for the credit of this Chief Justice and for the imitation of his successors, that while he maintained forms necessary to guard against fraud and to protect innocence, he had not the passion for technical objections by which justice is sometimes defeated. An indictment charged that "Mary Somerton, on a day and at a place named, being then and there a servant to one Joseph Hellier, on *the same day* there stole his goods." The prisoner being convicted and sentenced to transportation for fourteen years, the record was removed by writ of error, and error assigned that it did not sufficiently appear from the indictment that she was servant to the owner of the goods at the time when the larceny was committed, although she might have been so at some moment of the same day.

Lord Tenterden, C. J.: "If we were to hold that the allegation 'that on such a day the prisoner being the servant of Joseph Hellier did on the same day steal his goods,' does not import that she stole the goods at the same time when she was his servant, we should expose ourselves to the reproof expressed by a very learned and very humane judge, that it is disgraceful to the law when criminals are allowed to escape by nice and captious objections of form."[1]

Although generally so sound in his decisions, he did not reach the reputation of infallibility. He shocked the conveyancers exceedingly by holding that a jury might presume the surrender of a term assigned to attend the inheritance where it had not been dealt with for a number of years in subsequent conveyances,[2] and he got into some discredit by broadly laying down that a mortgagor allowed to remain in possession of the mortgaged premises is tenant to the mortgagee.[3] I must be permitted likewise to doubt the soundness of his decision that a native of Scotland born out of wedlock, but

[1] Rex *v.* Somerton, 7 B. and C. 465. [2] Doe *v.* Hilder, 2 B. and A. 784.
[3] Partridge *v.* Beer, 5 B. and A. 604.

rendered legitimate according to the law of that country by the subsequent marriage of his parents, is not inheritable to freehold property in England. It was confirmed by the House of Lords, but I cannot help thinking that it proceeded on a narrow-minded and erroneous principle. The admission was freely made that the claimant, having the status of legitimacy in the country of his birth, was to be considered legitimate in England for every other purpose, and the *conundrum* arising from from the definition of a "bastard" in the Statute of *Merton* might easily have been got over by the supposition of law upon which such legitimation proceeds—that a prior marriage had been contracted though not declared till after the birth of the child. The notion that there is some peculiarity in the tenure of common soccage land whereby it must descend to a son *de facto* born in wedlock, as borough English land goes to the youngest son, is in my opinion a fiction to support a miserable technicality.[1]

The bias which chiefly carried Abbott's mind astray when it missed the object to which it was directed was a suspicion of fraud. He had a very indifferent opinion of human nature, and at times he seemed to believe all mankind to be rascals. He delighted in discovering what he considered a fraudulent contrivance on the part of the plaintiff or of the defendant, and in unraveling it. I have heard Scarlett jocularly boast that he got many a verdict by humoring this propensity—"just giving the hint very remotely to the Chief Justice, and allowing his Lordship all the pleasure and the éclat of exposing and reprobating the cheat." This dexterous advocate certainly did at last prevail upon him to lay down a rule which, while it was acted upon, materially obstructed the transfer of negotiable securities—that "where a bill of exchange has been lost or stolen, a subsequent holder, although he has given a valuable consideration for it, cannot maintain an action upon it if the jury should think that he took *it under circumstances which ought to have excited the suspicion of a prudent and careful man.*"

[1] Doe d. Barthwistle *v.* Vardill, 5 B. and C. 438. This decision lowered us terribly not only in the opinion of Scotch but of French and American lawyers. Professor Storey was very strong against it.

The rule having before been that the title of the holder for value could only be impeached by proof of fraud,[1] the new doctrine was questioned and thus defended:

Abbott, C. J.: "I cannot help thinking that if Lord Kenyon had anticipated the consequences which have followed from the rule laid down by him in *Lawson* v. *Weston*, he would have paused before he pronounced that decision. Since then the practice of robbing stage-coaches and other conveyances of securities of this kind has been very considerable. I cannot forbear thinking that this practice has received encouragement by the rule laid down in Lawson *v.* Weston, which gives a facility to the disposal of stolen property of this description. I should be sorry if I were to say anything, sitting in the seat of judgment, that either might have the effect or reasonably be supposed to have the effect of impeding the commerce of the country by preventing the due and easy circulation of paper. But it appears to me to be for the interest of commerce that no person should take a security of this kind from another without using reasonable caution. I wish that doubts had been thrown on the case of Lawson *v.* Weston at an earlier time, and then this plaintiff would have conducted himself more prudently, and would not have suffered."

The new fashion took amazingly. This rule of "circumstances to excite suspicion of a prudent and careful man" was adopted by all the Judges, and was applied to all cases where the owner of any negotiable instrument had once been induced by improper means to part with the possession of it, as well as to cases of accidental loss and of robbery. But the rule died with its author It was soon much carped at: some Judges said that *fraud and gross negligence* were terms known to the law but of "the circumstances which ought to excite suspicion," there was no definition in Coke or Cowell—and the complaints of bill brokers resounded from the Royal Exchange to Westminster Hall, that they could no longer carry on their trade with comfort or safety. The consequence was that in the course of a few years by decisions in all the Courts at Westminster, the doctrine

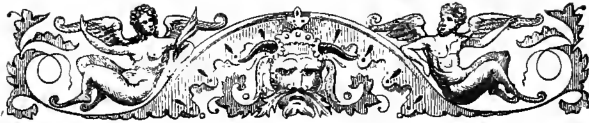
[1] Lawson *v.* Weston, 4 Esp. 56.

of "suspicion" was completely exploded, and the old rule restored that the claim of the holder of a negotiable security who gave value for it before it was due, although he may have received it from a person who could not have sued upon it, can only be defeated by proof of *mala fides* on his part.[1]

Notwithstanding these imperfections, failings, and errors, which it has been my disagreeable duty to allude to, I have pleasure in quoting and corroborating the testimony in the Chief Justice's praise of his contemporary and friend Sir Egerton Brydges, which shows the general estimation he enjoyed among his countrymen: "With what admirable skill, honor, and steadiness he fulfilled the most laborious, most difficult and overwhelming duties of his high station is universally acknowledged."

I am reluctant to bring to a conclusion my observations upon Abbott as a great magistrate, for in this capacity he excites almost unmixed admiration and respect. But in the last years of his life his destiny made him a political character, and although he still acted honorably and conscientiously, he by no means added to his permanent fame. I cannot help wishing indeed that like HOLT he had died a commoner. The coronet placed on his brow might raise his consequence with the vulgar, but in the eyes of those whose opinion was worth regarding he was a much greater man when, seated on his tribunal, with conscious mastery of all that belonged to his high office, he distributed justice to his admiring fellow subjects, than when he sought to sway a legislative assembly with which he was wholly unacquainted, and to which he was wholly unsuited.

[1] Goodman *v.* Harvey, 4 Add. and Ell. 470.



CHAPTER LIV.

CONCLUSION OF THE LIFE OF LORD TENTERDEN.

THE supposed elevation of the Chief Justice at this time, which exposed him to some censure, was no fault of his. He used confidentially to express surprise that his friend and patron Lord Chancellor Eldon, whose advice would have been implicitly followed by the Prime Minister and the King, had not raised him to the peerage when he became Chief Justice, but had actually resigned the Great Seal without making him such an offer. He concluded that at any rate Sir Charles Abbott ought to have had the refusal of the honor in 1824, when Sir Robert Giffard was created a Baron, having filled only the inferior offices of Chief Justice of the Common Pleas and Master of the Rolls. But he made no application or remonstrance by reason of what might have been considered a slight, and I believe that he would have been perfectly contented to remain Sir Charles Abbott. Knight, for the rest of his days. Lord Eldon's conduct is very inexplicable in withholding a peerage from one who from his high office had a fair claim to it, of whom he could have felt no jealousy, who had been many years his devil and dependant, and with whom his word in the House of Lords would have been law. Can we suppose that he was actuated by a disinterested study of Abbott's real good?[1]

[1] Since writing the statement in the text respecting Abbott's peerage, I have been favored with a perusal of his DIARY, from which I make the following extract, showing that he had become more desirous of having his blood ennobled than could have been suspected from his usual moderation and good sense, and from the sentiments which he himself had expressed in his letter to Sir Egerton Brydges [*ante*, p. 296]:—

" *April* 7, 1824.—Lord Giffard took his seat in the House of Lords on the first day of the Session, and within a day or two afterwards a patent issued, appointing him to act as Speaker of the House of Lords in the absence of the Lord Chancellor. A few days afterwards, the Lord Chancellor, with

However, he was most unexpectedly made a peer on the *disgrace* of that patron in all whose notions respecting State and Church he fully coincided, by a Prime Minister whom he had never seen, and whose principles, although they were not altogether Whiggish, he considered dangerously latitudinarian.

Mr. Canning, the warm friend of religious toleration, having agreed to form a balanced cabinet with anti-Catholic Lord Chancellor, Sir John Copley, still in dreadful apprehensions of the Pope, although on the verge of a sudden conversion to Catholic emancipation, had agreed to take the Great Seal, and was to be raised to the peerage by the title of Baron Lyndhurst. Moreover, Plunket, upon a slight show of opposition from the bar, having renounced the office of Master of the Rolls in England, and accepted the office of Chief Justice of the Common Pleas in Ireland, was likewise to be made a British peer by the family name, which his eloquence had rendered illustrious. It was thereupon suggested to the new premier by Scarlett, long his intimate private friend, and now his Attorney General elect, that it would be a graceful act in public estimation, and would throw

some hesitation and appearance of difficulty in introducing the subject, asked me what my feelings had been on Lord G.'s promotion to the peerage? I told him I had felt very little as it regarded myself, but much as it regarded my office, being higher than Lord G.'s. He asked whether I should think it right to move in the matter myself or to leave it to him? I told him I certainly should not think it right to move in it myself. All that I could collect further was that some of the Ministers had thought it not necessary to propose a peerage to me on the present occasion, because it was conferred on Lord G. for the special purpose of enabling him to sit in the House of Lords to hear appeals. I remarked that though I could not give my eldest son a fortune by any means suitable to the dignity, yet, under present circumstances, I should hardly think myself at liberty to refuse the honor, and should leave my son to make such advantage as he could of it, being sure he would never disgrace it by his conduct."

In a letter to the second Lord Kenyon, Lord Eldon professes to explain his sincere views respecting Abbott's peerage. "I agree with you that generally speaking, the Chief Justice of the King's Bench should be a peer, even if there had been no usage on the subject. Now, as to Abbott, his practice has been behind the bar. He never had any office—I think not a silk gown. He enters therefore on the office in very moderate circumcumstances, with a considerable family. His health is tender, and his eyesight not in a very safe state. Upon the whole, his own difficulty about taking the office was the apprehension that peerage was to go with it. This determination appears to me to have been quite right."—*Lives of Chancellors*, vol vii. p. 338, 3d ed.

some obloquy on Lord Eldon, whom they both heartily hated, and who heartily hated them both, if a peerage were given to Lord Eldon's neglected *protégé*, the Chief Justice of England. Accordingly Mr. Canning, in a letter to him, dated 19th April, 1827, after an introduction of polite eulogy, said—"As in the approaching law promotions more than one peerage will be conferred by his Majesty, it has occurred to Mr. Canning as due to Lord Chief Justice Abbott, to his Lordship's eminent services, and to the dignity of the Court over which he presides, that an opportunity should be offered to the Lord Chief Justice to express his willingness (if he entertains it) to accept a similar honor, which his Majesty is ready graciously to bestow upon it." The answer expressed humble and grateful acquiescence—upon which immediately came a notice from the Home Office that the inchoate peer should notify his choice of a title, and that a sum of money, about £800, should be deposited for the fees of the patent. He was afraid of jests if he should become "Lord Abbott," and he thought of the title of HENDON, where he had a villa; but he was advised to have something more sounding, and TENTERDEN being familiar to him as a Kentish man, from the well-known connection between the first appearance of its steeple and of the Goodwin Sands, the Gazette announced that "his Majesty had ordered letters patent to pass the Great Seal, to create Sir Charles Abbott, Knight, a Baron of the United Kingdom, by the name, style, and title of Lord Tenterden, of Hendon, in the County of Middlesex."

On the 2d of May following there was a grand ovation in Westminster Hall, to do honor to the solemnity of his taking his seat in the House of Lords. Sir James Scarlett, the Attorney General, mustered an immense congregation of barristers, and we followed the new peer, as yet only in his judicial robes, from the Court of King's Bench to the room of the Earl Marshal. There he was habited in his peer's robes, and marching between Lord Bexley and Lord Kenyon, he entered the House, and presented his patent and writ to the Lord Chancellor. We all stood under the bar, and the space being too small for us, such a serried conglomeration of

wigs never was seen before or since. We could hear nothing of the patent, the writ, or the oaths which were read, but we witnessed the procession through the House, headed by the Earl Marshal, and our Chief being seated by Garter King at Arms on the Barons' bench, we joyfully took our departure. Next morning in Court the new peer threw down the following note, which was handed through all the rows till it reached the junior of our body:—

DEAR MR. ATTORNEY,

"I was indeed gratified yesterday by the flattering attention which I received from the Bar. Assure them that it went to my heart.

"Ever most faithfully yours,

"TENTERDEN."

He continued to attend the House for some time very diligently, much pleased with his new honors, and afterwards as often as he entered it he wore his judicial *costume*, being the last Chief Justice who ever did so, when not officiating as Speaker. There was *franking* in those days, and he was pleased to say to me that "he considered this privilege to be conferred upon him for the benefit of the profession." He really was tickled when asked for a frank, and a glow of satisfaction might be descried on his countenance as he was writing, "Free—TENTERDEN." But he soon looked as if he considered it rather a liberty to ask him for a frank—particularly after he discovered that when on the circuit, sitting in Court, surrounded by country Justices, a graceless youth had made him frank a letter to a young lady of notoriously light character in London.

Lord Tenterden's maiden speech was his most successful (I might say his only successful) effort as a parliamentary orator. Luckily the subject was quite in his own line as a lawyer. A young heiress of 15 had been decoyed away from a boarding school by a profligate adventurer, whose object was her fortune, and had been induced to marry him. As he thought his scheme completely successful the moment the marriage ceremony had been performed, her friends had an opportunity to rescue her before any further injury had been inflicted upon her. They prosecuted him for the abduction, and

he was convicted and sentenced to a long imprisonment. They then presented a petition to the House of Lords, with her concurrence, praying that the marriage might be dissolved. He presented a counter-petition praying that the House would make an order for his being brought up to defend his marital rights. The Earl of Lauderdale, who had been called to the Scotch bar, possessed at that time great weight as a "Law Lord," and he contended that although there had been instances of dissolving by Act of Parliament the marriage of a young lady brought about by force, the present marriage, having been solemnized with the consent of both parties, could not be dissolved without a violation of principle nor without establishing a very dangerous precedent.

Lord Tenterden recapitulated all the facts of the case as if he had been summing up to a jury. He said "the principal offender and his accomplices had been convicted of a conspiracy originating in the basest motives of lucre, and conducted by fraud and forgery. He thought the House bound to afford the relief prayed. The friends of the unfortunate girl had done all in their power to vindicate the law, and now came to the Legislature for that relief which the peculiar nature of the case demanded. Although there had been here no actual force, the law says that fraud supplies the place of force. Possibly the marriage might be declared null and void by sentence of the Ecclesiastical Court, but if proceedings were to be instituted for that purpose, their Lordships must recollect the great delay which must take place and the anxiety and distress to which the parties must be subjected in the mean time. The pretended husband had the audacity to complain of hardship, but his punishment had been light compared with the enormity of his offense. Their Lordships were bound to inform him and all others who possessed themselves of the persons of young women for the sake of base lucre, that they not only exposed themselves to the penalties which the Courts of law might inflict, but that there is a power in the country which will deprive them of all possibility of ever reaping any advantage from their crimes."[1]

[1] 17 Parl. Deb. 882.

Leave was given to bring in the Bill, and it afterwards quietly passed through both Houses and received the Royal assent.

Before Lord Tenterden again opened his mouth in the House of Lords, Mr. Canning had fallen a victim to the aristocratic combination against him; Lord Goderich, the most imbecile of prime ministers, after a few weeks of premiership had ingloriously resigned; the Duke of Wellington and Peel were at the head of affairs; and a Bill had come up from the House of Commons to repeal the Corporation and Test Acts. These our Chief Justice had been taught to believe, and did potently believe, to be the two main pillars of the Church, and he was absolutely horrified to find that they were in danger from a joint assault of Whigs and liberal Tories. The Earl of Eldon remained true to his colors: but, sad to relate, Lord Lyndhurst and the Duke of Wellington himself meditated desertion.

The enemies of the Bill did not venture to attempt to throw it out on the second reading, and confined themselves to attempts to damage it in committee. Lord Tenterden finding that there was no chance of retaining the "Test Act," which applied to all offices and places of profit and power under the Crown, and if strictly enforced prevented any member of the established church of Scotland from holding a commission in the army or being an exciseman in any part of the United Kingdom, made a desperate struggle in favor of the "Corporation Act," whereby dissenters were excluded from the offices of mayor, alderman, common councillor, and all other offices in all municipal corporations in England. Not meeting with any sympathy with his attachment to the Corporation Act in its integrity, he moved an amendment whereby at least the office of chief magistrate in towns should not be polluted by being held by a dissenter. He held that the Church was and ought to be supported as a part of the constitution; and he therefore proposed that in the declaration to be made by the mayor or chief magistrate of any municipal corporation these words should be inserted:—"I entertain no opinion on the subject of religion which may or can prevent me attending the morning and evening service of

the Church of England, as set forth in the Book of Common Prayer." The Bishop of Chester asked whether, as the law would still stand, a corporate magistrate would not be prevented from attending a dissenting place of worship in the insignia of his office? Lord Tenterden answered "that it might be so, but still he thought that his amendment would be useful." Upon a division there were only 22 contents against 111 non-contents.[1] He succeeded, however, by a suggestion which he offered, in excluding Jews from municipal corporations, till in the year 1844 they were admitted by an Act brought in by Lord Lyndhurst, and passed during the administration of Sir Robert Peel. The first form of declaration proposed by Lord Tenterden was: "I recognize the Books of the Old and New Testament according to the authorized version as truly expressing the revealed will of God." But to this the Duke of Wellington objected, as it would exclude Roman Catholic officers from the army. Thereupon Lord Tenterden prompted a bishop to move the introduction of the form used in the oath of abjuration—"on the true faith of a Christian," and this being considered unobjectionable was agreed to without a division.

The Bill, even with the substituted declaration, the Chief Justice still condemned as fatal to the Church. It is wonderful that a man of his religious feelings should have had no objection to the desecration of the most solemn rite of Christianity by requiring it to be administered for a political purpose[2]—and that a man of his shrewdness did not anticipate the certain declension of the Dissenters as soon as they should be deprived of this invaluable grievance.[3]

If he disapproved of the conduct of the Government in 1828, for supporting the bill introduced by Lord John Russell in favor of Protestant Dissenters, what must

[1] 18 Parl. Deb. 1609.

[2] I well remember the time when barristers, who had not been at church for many years, on being appointed King's Counsel, used to go to St. Martin's Church (appropriated for this purpose), pay their guinea, and bring away a certificate of their having taken the Sacrament of the Lord's Supper according to the rites and ceremonies of the Church of England.

[3] The Church has ever since been gaining ascendency over the Dissenters, and has now only to fear internal divisions.

have been his sensations when, in 1829, he heard, on authority which could no longer be distrusted, that the Duke of Wellington and Sir Robert Peel were about to introduce a Bill to remove all disabilities from Roman Catholics and to allow them to sit in both Houses of Parliament! On the second reading of the Bill, Lord Tenterden made a speech, the beginning of which was attentively listened to, and is said, from the solemn tone and manner of the speaker, to have been very impressive:—

"My Lords," said he, "I would not now have offered myself to your Lordships in my individual capacity; but, thinking that it may be expected that a person in my situation should not give a silent vote against this portentous measure, I am induced to stand up and express my sentiments upon it. Several noble Lords who have supported it have denominated themselves 'the friends of civil and religious liberty.' If by assuming that title they mean to insinuate that those who differ from them as to the fitness of the proposed innovation are not the friends of civil and religious liberty, I for one must enter my protest against such an impntation. Every man may be mistaken in his opinion—he may even be mistaken in the motives on which he is acting—but, for myself, I have no hesitation in asserting that the very reason for my opposition to the present measure is derived from an attachment to civil and religious liberty. I have all my life admired the Protestant Church of England. I should have been the most ungrateful of men if I had not done so. My esteem for that church, which grew with my growth and strengthened with my strength, has not declined since the bodily feebleness of age has been stealing on me, but is increased by the perils to which she is now exposed. Not only am I actuated by religious considerations, but by the fixed conviction that our Protestant church is more favorable to civil and religious liberty than any other established church which either does at present exist, or has ever before existed in the world. Can I support a measure which I am sure by a broad and direct road leads to the overthrow of this Protestant church? We have been told of countries in Europe in which Roman Catholics and Protestants

have been found to go on very amicably together. But is there any other country in Europe or elsewhere which bears any resemblance to Ireland? In Ireland there is an acknowledged Popish hierarchy, assuming to themselves the names and titles of those dioceses which by law belong to Protestant prelates. And is it to be supposed that any hierarchy—let alone a Popish hierarchy—would be content to leave others in the enjoyment of those honors and emoluments which were wrested from their ancestors of the same faith with themselves? Is it possible that there should not exist in the human mind an earnest and anxious desire to obtain the restitution of these privileges? And will not strength be given to persons of the Roman Catholic persuasion to effect their object by granting them political power? By political power I mean a power exercised according to legitimate means; I cannot consent to give that designation to mere physical force or the power of numbers, which, if properly resisted, I do not dread."

He then went into a long, tiresome enumeration of all the acts passed against Roman Catholics since the Reformation down to the Union with Ireland, and set the peers on both sides of the House a-yawning, although they were too well bred to cough, or in any way intentionally to interrupt him. He concluded by declaring his conviction that, although the measure might for a time produce tranquillity, such tranquillity would not be of long duration—and would only be the deceitful stillness which precedes the storm, and that hereafter the combination of physical force and political power would be fatal to the empire.

Earl Grey spoke next, and thus began in a strain something between compliment and sneer:—

"I too, my Lords, am very reluctant to offer myself to your notice. I rise with a considerable degree of fear lest presumption should be imputed to me for attempting to follow the noble and learned Lord, the Chief Justice of England, who has just delivered his opinion, and who has rested the greater part of the argument which he addressed to your Lordships on a review of the laws which bear upon the situation of his Majesty's Roman Catholic subjects, and whose great learning, professional

habits, and high authority give him claims to your Lordships' attention to which I cannot pretend."

He commented upon all the statutes which had been quoted, contending that none of them presented a permanent bar to the claims of the Roman Catholics. When he came to the Bill of Rights, and alluded to the declaration, that to keep and carry arms was the right of the subjects of this realm, Lord Tenterden interjected "being Protestants." *Earl Grey:* "Well, my Lords, *of the Protestant subjects*—it makes no difference in my argument: among all the provisions of the Bill of Rights the noble and learned Lord does not find it anywhere stated that Roman Catholics are to be for ever excluded from the enjoyment of the rights of the British constitution."

The Chief Justice fared no better when, on Lord Grey's statement that Parliament had enacted in the reign of William and Mary that every officer of the army and navy shall take the oath of supremacy before receiving his commission, he exclaimed, "It was a separate Act." *Earl Grey:* "Yes, it was a separate Act (1 W. and M. c. 8, s. 10); but it was as much a part of the measures of the Revolution as the law which required that the members of both Houses of Parliament should take the oath of supremacy. Although an administration to which I belonged was overturned by an attempt slightly to modify that Act, it was afterwards totally repealed by the very men who raised against us the cry *that the Church was in danger*,—the Earl of Eldon from the woolsack giving the royal assent,—and both services were thrown open to Roman Catholics,—as both Houses of Parliament, I hope, will shortly be,—notwithstanding his opposition and that of the noble and learned Lord,—who perhaps was not fully aware of his apparent inconsistency."[1]

I have heard Lord Tenterden, without any diminution of my respect for him, oppose the Catholic Relief Bill —which, though a necessary, was a perilous measure,— the ominous prophecies about which certainly have re ceived some verification by subsequent Papal aggression But I felt much disgust from his violent and vulgar op

[1] 21 Parl. Deb. 300.

position to a bill which I had materially assisted in carrying through the House of Commons, to put an end to the system of robbing churchyards of dead bodies, and to the crime of committing murder for the supply of subjects for dissection to schools of anatomy. He utterly misrepresented the Bill, by saying that all who went into hospitals hereafter must lay their account with their bodies being "dissected and anatomized, as if they were hanged for willful murder." To excite prejudice and passion against that which must evidently be conducive to decency and humanity, he added, in a piteous tone, that "the poor justly felt an unconquerable aversion to the dissection of their bodies, which would not be overcome by the most solemn assurance that they would afterwards receive Christian burial." The practice of "Burking," which had brought such disgrace upon Edinburgh, he declared might in future be prevented by a newly-discovered test, which enabled any skillful medical man to ascertain whether a person whose body was offered for sale had died by disease or violence, and so, the market for murdered dead bodies being spoilt, murders to obtain them for sale would cease. These arguments, coming from a Chief Justice, made a considerable impression on the Episcopal bench and Conservative peers, and the Bill was lost. However, proof being given him that, in spite of the continuing atrocities of resurrection-men, anatomy could not be taught under the existing system, the Bill was allowed to pass in the next session of Parliament, and it has been found to operate most beneficially.[1]

Lord Tenterden likewise strenuously opposed the Bill for taking away the capital punishment from the crime of forgery, which had long been considered, even by enlightened men, indispensably necessary for our commercial credit. He said, "When it was recollected how many thousand pounds, and even tens of thousands, might be abstracted from a man by a deep-laid scheme of forgery, he thought that this crime ought to be visited with the utmost extent of punishment which the law then wisely allowed."[2]

Nevertheless he was by no means, like Eldon and

[1] 21 Parl. Deb. 1749. [2] 25 Parl Deb. 354.

Kenyon, a bigoted enemy to law reform. When commissions were issued by Peel, on the suggestion of Lord Brougham, for this laudable object, he allowed his own name to be introduced into that for inquiring into the procedure of the ecclesiastical courts; he assisted in pointing out proper commissioners for the others;[1] he encouraged their labors, and when they had made their reports, he employed himself in drawing Bills to carry their suggestions into effect.

Thus he wrote in the summer of 1830 to his old friend Sir Egerton; "You are probably aware that we had three commissions, one on the practice and proceedings of the superior Courts of Common Law, another on the Law of Real Property, and a third on the Ecclesiastical Courts. Two reports have been made by each of the two first—none by the latter, of which I am a member. The reports contain recommendations and proposals for many alterations, some of which I think useful and practicable. Something, however, must be done by the Legislature to satisfy the public mind; and under this impression I have employed myself since the circuit in preparing no fewer than five bills, intended chiefly to give some further powers to the common law courts, and make some alteration in the practice, but without infringing on any important principle, adopting some of the recommendations, with some alterations from the proposals. I wish it were possible to cure the evil you so justly complain of. Whatever shortens and simplifies will be calculated to save expense; but Acts of Parliament cannot make men honest. I doubt whether an act to subject bills for convenancing to taxation would effect much. As I think they ought to be, I would willingly promote such an act; but if I bring my five bills before Parliament, I shall have done at least as much as I ought to do, and perhaps more, though, to say the truth, I have one more bill on the anvil, and have had for at least three years, without the courage to propose it. It has had much of the *limæ labor*. Indeed, to say the truth, this *limæ labor* is an occupation by no means disagreeable to my mind."

[1] By his advice I was myself placed at the head of the Real Property Commission.

The Bills respecting the procedure of the Common Law Courts, embodying the suggestions of the Commissioners, passed without opposition, and almost without notice, but that on which the *limæ labor* had been so long bestowed, and which was peculiarly his own, caused a good deal of discussion. The object of it was to define the periods of time which will confer a title to certain rights by enjoyment, without a reference either to prescription or grant, and to rectify the injustice which arose from claims to tithe being brought forward, notwithstanding exemption from payment of tithe or the existence of a modus for centuries, during which the advowson of the living and the land in the parish had been sold upon the footing of the exemption or the modus. In introducing his Bill in the House of Lords he thus tried to make it intelligible to his unwilling hearers: "Your Lordships may be aware that many rights can only be established on the supposition that they have existed 'for time whereof the memory of man runneth not to the contrary;' and that this period denominated '*legal memory*' or '*prescription*' extends so far back as the commencement of the reign of Richard I., or as some say, only to his return from the holy war. But it is hardly ever possible to trace a right so far back by direct evidence, and Judges are obliged to tell juries that from modern enjoyment they may presume the existence of the right in very remote times. This, however, leads to great uncertainty, for Judges may differ as to what is a reasonable ground for the presumption; and if evidence is offered, showing that during any reign since Richard I. the right did not, or could not exist, it is gone for ever. Again, some rights may be claimed by grant from the owner of the land over which they are to be exercised, and after an enjoyment of them for a certain period of time, Judges have been in the habit of calling on juries to presume that such a grant has been made, although it is not forthcoming, and in truth never had existence. But besides the scruples of some Judges and some jurors against resorting to this fiction it is occasionally insufficient from legal technicalities to protect long enjoyment. I conceive that it will be much better to follow the example of all other civilized na-

tions, and to enact that after undisturbed enjoyment for periods to which direct and satisfactory evidence may be applied, the right shall be conclusively established, and I propose periods of sixty, forty, thirty, and twenty years, under different modifications and conditions according to the nature of the right—whether it be to take part of the profits of land, or only to exercise an easement over it. Thus the right to common of pasture, to common of estovers, to ways, to light, air, and water, will be respectively regulated and provided for. The next subject to which I have to draw your Lordships' attention is the claim to tithes. At present, under the maxim *nullum tempus ecclesiæ*, a modus, or small payment in lieu of tithes, may be challenged and set aside, unless it is supposed to have existed so far back as legal memory. Here again the doctrine of presumption is resorted to, but it will surely be much better that some reasonable time should be fixed, during which positive proof of the modus shall be required, and that then the modus shall be unchangeable. Farther, non-payment of tithes for any length of time operates no exèmption, unless the land can be proved to have belonged to a religious house before the Reformation, and thence much expensive and vexatious litigation ensues. I propose to make the payment of a modus or entire non-payment for thirty years sufficient to establish the modus or exemption, unless a contrary practice can be distinctly proved at some antecedent time, and where the evidence extends to sixty years to make the right claimed by the occupier of the land to pay a modus, or to be altogether exempt from papment, absolute and indefeasible. I am, my Lords, most sincerely attached to the clergy of the Church of England ; I should be most ungrateful if I were not so ; but it is better for them as well as for their parishioners that a permanent peace should be concluded between the parties on the basis of *uti possidetis*. I doubt not that the clergy have much oftener lost what strictly belonged to them than gained by usurpation. Having seen the bad effects of the warfare which has been carried on, I must say PETO PACEM. Tithe suits almost invariably cause personal dissensions in the parish, and lessen the usefulness of the incumbent, but they not un

frequently involve him in expense which he can ill afford, and turn out disastrous for himself and his family."

Lord Chancellor Brougham highly complimented the Bill, and it was read a first time, but on account of the speedy dissolution of Parliament it was lost for that Session. In the following year Lord Tenterden again brought forward the measure, dividing it into two Bills, one "For shortening the time of Prescription in certain cases," and the other "For shortening the time required in claims of modus decimandi, or exemption or discharge of tithe." They both passed[1] exactly as he framed them,—but I am sorry to say that although they proceed on very good principles they have by no means established for him the reputation of a skillful legislator. The Judges have found it infinitely difficult to put a reasonable construction upon them, and, in adapting them to the cases which have arisen, have been obliged to make law rather than to declare it.[2]

An opportunity occurring to him of expressing his general opinion upon "Parliamentary privilege," he showed very plainly what his opinion would have been been respecting the questions on this subject which arose after his death. Lord Brougham, the Chancellor, being rather hostile to Parliamentary privilege, had expressed a doubt respecting the power of the House to fine and imprison for libel. *Lord Tenterden:* "All the Courts of Westminster Hall exercised this privilege, and how can it properly be denied to your Lordships? In what cases, under what circumstances, and to what extent your Lordships should exercise this privilege, it is for your Lordships to determine—but the privilege is clear, distinct, and indisputable—being conferred not for the protection of those who possess it, but for the sake of the

[1] 2 and 3 Wm. IV. c. 71, and 2 and 3 Wm. IV. c. 100. One of his biographers has likewise given to him the credit of 3 and 4 Wm. IV. c. 27, for abolishing real actions and making a uniform rule as to the title to lands from enjoyment.—Townsend, vol. ii. 272. Having drawn it myself, with the assistance of my brother Commissioners, I can testify that he never saw it till it was in print.

[2] On one question which arose respecting exemption from tithes, a case was sent by the Lord Chancellor successively to the Court of Common Pleas, the Court of Queen's Bench, and the Court of Exchequer, and in each Court the Judges were equally divided upon it

public and for the good government of the nation. The very principle of our constitution requires that the two Houses of Parliament should possess all the powers necessary for enabling them to perform the functions which it assigns to them."[1]

I now come to the measure which he considered fatal to the monarchy, which drove him from the House of Lords, and which probably shortened his days—the reform of the representation of the people in Parliament. On the 5th night of the debate on the second reading of the Reform Bill of 1831, he rose and spoke as follows: "I feel it necessary to address a very few sentiments to your Lordships on this very important question. Many topics had occurred to me against this appalling Bill. but they have already been urged by others with more force and ability than I could have brought to the task. But there is one point on which I feel it my peculiar and sacred duty to address you—not so much in my character as a Peer, as in the character which the robes I wear remind me that I have to sustain. I find, my Lords, that the rights of almost all the corporate bodies in England, whether they are held by charter or prescription, are treated by this Bill, so far as I see, with absolute contempt. Many of them are to be annihilated, and the rest are to be despoiled of their privileges. I have listened in vain for any reason for the extent to which this destruction and spoliation are carried. I should be ready to run the risk of innovation were it intended only to transfer privileges from some decayed parts of the constitution to other more sound and healthy parts, which I believe in my conscience is all that is desired by the reasonable portion of his Majesty's subjects, by the middle classes, for whom I entertain as great a respect as any man (I may tell your Lordships that I feel a respect and affection for these classes, having sprung from them), but instead of such a reasonable and moderate measure, reconcilable with the institutions of the country, I find one going farther than the worst fears of

[1] 3 Parl. Deb. 3d Series, p. 1714. Lord Brougham imputed to him a blunder, by supposing that he had attributed to the House of Commons, as well as to the House of Lords, the power of fining and imprisoning for a time certain. He merely excused himself on the ground that he had never been a member of the Lower House.

alarmists had ever anticipated. On what footing is the measure rested? Expediency alone! My Lords, Expediency is a tyrant whose will is made a pretext for every act of injustice. Corporate rights, hitherto held sacred, are now recklessly violated, and I will tell those who despise them that after this precedent the rights of property will be equally disregarded, and liberty and life itself will be sacrificed to expediency, or the appetite of the mob for plunder and blood. I conclude with repeating that I consider myself in the situation which I unworthily fill peculiarly bound to uphold the chartered rights of the people, and I hereby solemnly proclaim that the flagrant violation of these rights is of itself an insuperable objection to this Bill."

I happened to be standing on the steps of the throne when this oracular denunciation was delivered, and I am sorry to say that the effect was rather ludicrous. The notion had never before entered the imagination of any man that the Chief Justice of England is ex-officio the Patron Saint of all municipal corporations, and that when they are in danger he is bound to appear Deus ex machinâ in their defense.

The doomed Tenterden was soon after snatched away (happily perhaps) from the evil to come. How would he have comported himself when the "Municipal Corporation Reform Bill" was brought forward, which actually did sweep away every close corporation in the kingdom, made every ratepayer a burgess, and created by popular election a Mayor, Aldermen, and Councillors in every borough, "*all statutes, charters, and customs to the contrary in any wise notwithstanding?*" On the present occasion he was in a triumphant majority of 199 to 158 against the second reading of the Parliamentary Reform Bill—and for some months longer he slept soundly, corporate rights remaining untouched.[1]

But in the month of April following, the Parliamentary Reform Bill again came up from the Commons; and although it now very improperly preserved the franchise of the corrupt freemen, Lord C. J. Tenterden's hostility to it was in no degree mitigated. Accordingly, it was thus assailed by him in the last speech he ever delivered

[1] 8 Parl. Deb., 3d Series, 301.

in Parliament: "A safe and moderate plan of reform I should not object to; but the question is, whether you will go further with the consideration of this bill—a bill which I have no hesitation in saying ought on no account to be permitted to pass into a law. The bill evinces a settled disregard of all existing rights. In its disfranchising clauses it does more than can be attempted with safety, and in its enfranchising clauses it goes infinitely beyond the wants and the wishes of the country. The right of sending representatives to Parliament is to be lavished not merely on great populous towns which have recently risen into opulence, but on villages and hamlets which have sprung up around them. Moreover, the elective franchise is to be placed, if not entirely, at least in a preponderating degree, in the hands of one class. If this had been a class of well-educated, well-informed men, still I should have objected to making it the sole depository of political power; but this class notoriously does not consist of such persons as I have just described. Those who belong to it are entitled to your Lordships' superintending care and protection; but they are unfit to become your masters. We are asked to go into a committee on the bill, because there it may be amended. In committee I should feel it my duty to move that the whole be omitted after the word 'that,' for it cannot be modified so as to be rendered innocuous. The principle of the bill is precisely the same with that which you have already rejected. It is said that we must not go against the wishes of the people and a decided majority of the House of Commons. But you must consider whether the fulfillment of such wishes would not be pernicious to the people; and a majority of the House of Commons, however much entitled to respect, ought not to induce your Lordships to sanction a measure which you believe in your conscience would involve Lords and Commons in the general ruin. Let the bill be immediately rejected, for any protracted consideration of it can only lead to the delusion as well as to the disappointment of the public. We are threatened with calamitous consequences which may follow the rejection of the bill; but I have no faith in such predictions. I never have despaired,

nor will now despair of the good sense of the people of England. Give them but time for reflection, and I am sure they will act both wisely and justly. Of late they have been excited by the harangues of ministers, by the arts of emissaries, and by the inflammatory productions of the periodical press. Let them have time to cool, and they will ere long distinguish between their real and their pretended friends. Already there is a growing feeling among the people that they have been following blind guides, and I believe there is a great majority of the nation ready to adopt any measure of temperate reform. This measure, my Lords, leaves nothing untouched in the existing state of the elective franchise. It goes to vest all the functions of government in the other House of Parliament, and if it were to pass, there would be nothing left for this House or for the Crown, but to obey the mandates of the Commons. NEVER, NEVER, MY LORDS, SHALL I ENTER THE DOORS OF THIS HOUSE AFTER IT HAS BECOME THE PHANTOM OF ITS DEPARTED GREATNESS."

There was still a decided majority of the Peers determined that the bill should not pass. Nevertheless the expedient course was considered to be, that it should not again be thrown out in this stage, and the second reading was carried by a majority of 184 to 175.[1]

For a few days there seemed reason to think that Lord Lyndhurst's manœuvre would succeed. The King concurred in it, and a new administration was named to mutilate the bill. But the nation said No! The King was obliged to agree, if necessary, to create the requisite Peers to carry "the bill, the whole bill, and nothing but the bill." The dread of being so "swamped" by fresh creations frightened away a great many of its opponents, and it quietly passed its subsequent stages unchanged.

Lord Tenterden was as good as his word. After the Reform bill received the Royal assent he never more entered the doors of the House.

If he had survived a few years. he might have laughed at the disappointment of those who expected from this measure a new era of pure public virtue and uninterrupted national prosperity; yet he would have wit-

[1] 12 Parl. Deb. 3d Series, 398, 454.

nessed the falsification of his own predictions; for, while individual peers ceased to be members of a formidable obligarchy, the house collectively retained its place in the constitution, and, I believe, it has since risen in public estimation and in inflence.

Lord Tenterden was sincerely convinced that the House and the country were doomed to destruction, and this conviction aggravated the disorders by which his enfeebled frame was now afflicted. In the following strain, although almost too feeble to support existence, he poured forth his anguish to Sir Egerton Brydges:—

"Russell Square, May 20th, 1832.

"MY DEAR SIR EGERTON,

"I have made several attempts to write to you, but have found myself unable to do so; nor can I write as I ought, or wish to do. My spirit is so depressed, that when I am strongly excited by some present object that admits of no delay, I sink into something nearly approaching to torpidity. My affection for you remains unchanged. God bless you.

"Your most affectionate friend,

"TENTERDEN."

Again, on the 8th of June, after addressing the same correspondent upon matters of inferior importance, he adds —"We differ upon the great measure that has so long agitated the country. I considered the Catholic Bill as the first, and I consider this as the concluding step to overturn all the institutions of the country. In my anticipations of the effect of the first, I have certainly not been mistaken. The present state of Ireland proves this. Would to God I may be mistaken as to the effect of the Reform Bill. Great alarm was felt yesterday from the Paris news. I heard to day that the Government prevailed in the conflict. I have no confidence in a temporary triumph over a principle that I believe was never subdued, and can only be restrained by unintermitting coercion."

He rallied a little, and got through the sittings after term pretty comfortably, giving his annual dinner to the King's counsel; but instead of asking each of them to drink wine with him *seriatim* as formerly, he drank wine conjointly, first with all those who sat on his right

hand, and then with all those on his left, hospitably admonishing them to drink wine with each other.

In July he went the Midland Circuit, as the lightest he could choose, and he was able to sit in Court and finish the business at every assize town, notwithstanding the annoyance of a violent cough and other alarming symptoms. After a short stay at Leamington he returned to his seat at Hendon, and there spent the long vacation; sometimes yielding to despondence, and sometimes trying to amuse himself with making Latin verses, and with classical reading, which used to be his solace.

Being obliged to come to town for a Council to determine the fate of the prisoners convicted at the Old Bailey, he wrote to Sir Egerton Brydges the following melancholy epistle, which did not reach its destination till the writer was relieved from all his sufferings, and transferred to a better state of existence.

"MY DEAR SIR EGERTON,

"I came to town yesterday to attend His Majesty on the Recorder's report, and have received your letter this morning. I have lately suffered, and am still suffering, very severely from an internal complaint, which they all an irritation of the mucous membrane. It troubled me during all the circuit. I got rid of it for a short time at Leamington, but it soon returned with greater violence, and has for some time deprived me of appetite, and produced great depression of spirits. Sir Henry Halford, however, assures me that a medicine he has ordered me will in time remove the complaint, and my confidence in him induces me to trust it may be so, though after a trial of six days I cannot say that I find any sensible improvement. God bless you.

"Your most affectionate friend,

"TENTERDEN."

However, his mental faculties remained wholly unimpaired; and he was determined "to die, like a camel in the wilderness, with his burden on his back." An important Government prosecution, in which I was counsel—*The King* v. *Mayor of Bristol*—was appointed to be tried at bar immediately before the Michaelmas Term.

This excited prodigious interest, as it arose out of the Reform-Bill riots at Bristol, in which a considerable part of the city was laid in ashes. The Chief Justice appeared on the Bench with the other Judges, and continued to preside during the first two days of the trial. I recollect one characteristic sally from him, indicating his mortal dislike of long examinations. Mr. Shepherd, the junior counsel for the Crown, having asked how many horses were drawing a messenger's post-chaise sent in quest of the Mayor, and being answered "four," Lord Tenterden sarcastically exclaimed in a hollow voice, "And now, Sir, I suppose you will next get out from your witness *what was the color of the post-boys' jackets*." But his bodily health was evidently sinking. When he went home in the evening of the second day of the trial he no appetite for the dinner prepared for him, and he fancied that fresh oysters would do him good. He ate some; but they disagreed with him, and an access of fever supervening, he was put to bed, from which he never arose. Although attended by Sir Henry Halford, Dr. Holland, and Sir Benjamin Brodie, his disease baffled all their skill. He became delirious and talked very incoherently. Afterwards he seemed to recover his composure, and, raising his head from his pillow, he was heard to say in a slow and solemn tone, as when he used to conclude his summing-up in cases of great importance, "And, now gentlemen, of the jury, you will consider of your verdict." These were his last words: when he had uttered them, his head sunk down, and in a few moments he expired without a groan.

According to directions left in his will, his remains were, in a very private manner, interred in the vaults of the Foundling Hospital, of which he had been a governor. At the south-east entrance to the hospital is to be seen his monument, with the following modest inscription, written by himself only two months before his death:

"Prope situs est
CAROLUS BARO TENTERDEN
Filius natu minor
Humillimis parentibus,
Patre vero prudenti matre piâ ortus
Per annos viginti in causis versatus,

Quantum apud Britannos honestus labor
Favente Deo valeat
Agnoscas lector !"

Underneath is added, by his pious son—

" Hæc de se conscripsit
Vir summus idemque omnium modestissimus."

The impartial biographer cannot say that he was a great man—but he was certainly a great magistrate. To the duties of his judicial office he devoted all his energies, and on the successful performance of them he rested all his fame. Authorship he never attempted in his lifetime beyond his law book, which, although it passed through various editions, is already out of fashion and thrown aside, like an old almanac, as it was founded on statutes many of which have been repealed, and on decisions many of which have been reversed. A Diary which he kept, from November 1822, to February, 1825, now lies before me. The following commencement led me to expect much useful information and amusement from it :—

" I have often wished that my predecessors had left a Diary, and that I was in possession of it."

But I am grievously disappointed. It contains very little that is interesting to a succeeding Chief Justice or to any one else. The diarist not only abstains from all notice of public events, but he makes no remark of any value on any professional subject. He never hints at any defects or improvements in the administration of justice in his Court, and never introduces the name of any counsel who practiced before him. He confines himself to dry details of the number of causes tried at the sittings, and his expenses on the circuits. One might have expected some satirical allusions to his brother Judges, for whom he had not a very high respect ; but nothing is said of any of them that might not have been published at Charing Cross. There is no ground for regret that the Diary was not begun sooner or continued later.[1]

[1] Beyond the extracts which I have given, I find nothing more curious than the following table of his expenses on the Circuit :—

	£	s.	d.
Spring, 1816—Home	243	7	0
Summer, 1816—Oxford	290	9	0

Neither on the Bench nor in society did he ever aim at jocularity or wit, although, by accident or design, he once uttered a pun. A learned gentleman, who had lectured on the law and was too much addicted to oratory, came to argue a special demurrer before him. "My client's opponent," said the figurative advocate, "worked like a mole under ground, *clam et secretè*." His figures and law Latin only elicited an indignant grunt from the Chief Justice. "It is asserted in Aristotle's Rhetoric"—"I don't want to hear what is asserted in Aristotle's Rhetoric," interposed Lord Tenterden. The advocate shifted his ground and took up, as he thought, a safe position. "It is laid down in the Pandects of Justinian"—"Where are you got now?" "It is a principle of the civil law"—"Oh, sir," exclaimed the Judge, with a tone and voice which abundantly justified his assertion, "we have nothing to do with the *civil* law in this court."[1]

The extreme irregularity of the Judges in their conferences, which there has often been occasion to deplore, once forced him into the necessity of coining a word. He said he could not call them *Parliamentum Indoctum*, but that he might well call them *Parliamentum Bablitivum*.

He was courteous in company, but rather stiff and formal in his manners, as if afraid of familiarity and requiring the protection of dignified station—which probably arose from the recollection of his origin and of his boyish days. He would voluntarily refer to these among very intimate faiends, but he became exceedingly uneasy when he apprehended any allusion to them in public. Once, however, he was complimented upon his rise under circumstances so extravagantly ludicrous that he

Spring, 1817—Western	323	16	0
Summer, 1817—Norfolk	251	7	0
Spring, 1819—Norfolk	165	15	0
Summer, 1819—Midland	274	9	0
Summer, 1822—Northern	203	3	0
Summer, 1824—Western	374	0	0

[1] Townsend, 261. I should rather think, notwithstanding the *Joe Miller* of Garrick catching an orange thrown at him on the stage, and exclaiming, "This is not a *civil* orange?" that the Chief Justice's pun was unintentional, like that of Mr. Justice Blackstone, who says in his Commentaries, with much gravity, that "landmarks on the sea-shore are often of *signal* service to navigation."

joined in the general shout of laughter which the orator called forth. Sir Peter Laurie, the saddler, when Lord Mayor of London, gave a dinner at the Mansion House to the Judges, and in proposing their health, observed, in impassioned accents, "What a country this is we live in! In other parts of the world there is no chance, except for men of high birth and aristocratic connections; but here genius and industry are sure to be rewarded. See before you examples of myself, the Chief Magistrate of the Metropolis of this great empire, and the Chief Justice of England sitting at my right hand—both now in the highest offices in the State, and both sprung from the very dregs of the people!"

Lord Tenterden is placed in a very amiable point of view by MACREADY, the celebrated tragedian, in a lecture which he delivered to a Mechanics' Institute after he had retired from the stage, and which he published with several others, possessing great interest. The lecturer gives an account of a visit paid by him to Canterbury Cathedral, under the auspices of a Verger, who, by reading and observation, had acquired wonderful knowledge of architecture and mediæval antiquities. Having introduced us to his guide, the ex-tragedian thus proceeds: "He directed my attention to everything worthy of notice; pointed out with the detective eye of taste the more recondite excellence of art throughout the building, and with convincing accuracy shed light on the historical traditions associated with it. It was opposite the western front that he stood with me before what seemed the site of a small shed or stall, then unoccupied, and said, 'Upon this spot a little barber's shop used to stand.' The last time Lord Tenterden came down here he brought his son Charles with him, and it was my duty, of course, to attend them over the Cathedral. When we came to this side of it he led his son up to this very spot and said to him, '*Charles, you see this litle shop; I have brought you here on purpose to show it to you. In that shop your grandfather used to shave for a penny! That is the proudest reflection of my life! While you live never forget that, my dear Charles.*' And this man, the son of a poor barber, was the Lord Chief Justice of England. For the very reason, therefore, that

the chances of such success are rare, we should surely spare no pains in improving the condition of all whom accident may depress or fortune may not befriend."

I have heard some complain, although I confess I myself never saw any sufficient ground for the complaint, that after Abbott had been several years Chief Justice, he was not only a *martinet* in Court, but that he rigidly enforced the rules of evidence and of procedure when presiding at his own table. The following amusing anecdote, recorded of him in the 'Quarterly Review,' I suspect is only entitled to the praise of being *ben trovato*: "He had contracted so strict and inveterate a habit of keeping himself and every body else to the precise matter in hand, that once, during a circuit dinner, having asked a county magistrate if he would take venison, and receiving what he deemed an evasive reply: 'Thank you, my Lord, I am going to take boiled chicken;' his Lordship sharply retorted, 'That, sir, is no answer to my question; I ask you again if you will take venison, and I will trouble you to say *yes* or *no*, without further prevarication!'"

At all times he showed an affectionate regard for the place of his early education:—"In 1817, the centenary commemoration of the school, he accepted an invitation to Canterbury, witnessed the examination of the scholars, addressed the successful candidates, and, after attending the usual service and sermon at the Cathedral, dined with the masters and members of the institution at the principal hotel of the city. In his speech after dinner he expressed himself with feeling and effect, and declared that to the free school of Canterbury he owed, under Divine blessing, the first and best means of his elevation in life. Nor was his gratitude confined to words. With a tasteful retrospect of the causes of his own success, he founded and endowed two annual prizes —the one for the best English essay, the other for the best Latin verse." [1]

Lest I should be misled by partiality or prejudice, I add, in justice to the memory of Lord Tenterden, sketches of him by very skillful artists. Thus is he portrayed by Lord Brougham:—

[1] 2 Towns. 237.

"A man of great legal abilities, and of a reputation, though high, by no means beyond his merits. On the contrary, it may be doubted if he ever enjoyed all the fame that his capacity and his learning entitled him to. For he had no shining talents; he never was a leader at the bar; his genius for law was by no means of the depth and originality which distinguished Mr. Holroyd; nor had he the inexhaustible ingenuity of Mr. Littledale, nor perhaps the singular neatness and elegance of Mr. Richardson. His style of arguing was clear and cogent, but far from brilliant; his opinions were learned and satisfactory, without being strikingly profound; his advice, however, was always safe, although sometimes, from his habitual and extreme caution, it might be deficient in boldness or vigor. As a leader he was rarely and only by some extraordinary accident appeared, and this is a manner so little satisfactory to himself, that he peremptorily declined it whenever refusal was possible, for he seemed to have no notion of a leader's duty beyond exposing the pleadings and the law of the case to the jury, who could not comprehend them with all his explanation. Although his reputation at the bar was firmly established for a long course of years, it was not till he became a Judge, hardly till he became Chief Justice, that his merits were fully known. It then appeared that he had a singularly judicial understanding, and even the defects which had kept him in the less ambitious walks of the profession—his caution, his aversion to all that was experimental, his want of fancy—contributed, with his greater qualities, to give him a very prominent rank indeed among our ablest Judges. One defect alone he had, which was likely to impede his progress towards this eminent station; but of that he was so conscious as to protect himself against it by constant and effectual precautions. His temper was naturally bad; it was hasty and it was violent, forming a marked contrast with the rest of his mind. But it was singular with what success he fought against this, and how he mastered the rebellious part of his nature. Indeed it was a study to observe this battle, or rather victory, for the conflict was too successful to be apparent on many occasions. On the bench it rarely broke out, but there

was observed a truly praiseworthy feature, singularly becoming, in the demeanor of a Judge. Whatever struggles with the advocate there might be carried on during the heat of a cause, and how great soever might be the asperity shown on either part, all passed away—all was, even to the vestige of the trace of it, discharged from his mind, when the peculiar duty of the Judge came to be performed: and he directed the jury, in every particular, as if no irritation had ever passed over his mind in the course of the cause. Although nothing can be more manifest than the injustice of making the client suffer for the fault or the misfortune of his advocate—his fault, if he misconducted himself towards the Judge; his misfortune, if he unwittingly gave offense—yet, whoever has practiced at Nisi Prius, knows well how rare it is to find a Judge of an unquiet temper, especially one of an irascible disposition, who can go through the trial without suffering his course to be affected by the personal conflicts which may have taken place in the progress of the cause. It was, therefore, an edifying sight to observe Lord Tenterden, whose temper had been visibly affected during the trial (for on the bench he had not always the entire command of it, which we have described him as possessing while at the bar), addressing himself to the points in the cause, with the same perfect calmness and indifference with which a mathematician pursues the investigation of an abstract truth, as if there were neither the parties nor the advocates in existence, and only bent upon the discovery and the elucidation of truth."

The following discriminating praise and mild censure are meted out to him by Mr. Justice Talfourd, the author of "Ion": —

"The chief judicial virtue of his mind was that of *impartiality;* not mere independence of external influence, but the general absence of tendency in the mind itself to take a part, or receive a bias. How beneficial this peculiarity must prove in the judicial investigation of the ordinary differences of mankind, is obvious; yet in him it was little else than a remarkable absence of imagination, passion, and sympathy. In him the disposition to single out some one object from others for preference—the power and the love of accumulating

associations around it and of taking an abstract interest in its progress, were wholly wanting. The spirit of partisanship, almost inseparable from human nature itself, unconsciously mingling in all our thoughts, and imparting interest to things else indifferent, is especially cherished by the habits and excitements of an advocate's profession, and can, therefore, seldom be wholly prevented from insinuating itself into the feelings of the most upright and honorable Judges. But Lord Tenterden, although long at the bar, had rarely exercised those functions of an advocate which quicken the pulse and agitate the feelings; he had been contented with the fame of the neatest, the most accurate, and the most logical of pleaders; and no more thought of trials in which he was engaged as awakening busy hopes and fears, than of the conveyances he set forth in his pleas as suggesting pictures of the country to which they related. The very exceptions to his general impartiality of mind, partook of its passionless and unaspiring character. In political questions, although charged with a leaning to the side of power, he had no master prejudices; no sense of grandeur or gradation; as little true sympathy with a high oppressor as with his victims. On the great trials of strength between the Government and the people, he was rarely aroused from his ordinary calmness; and he never, like his predecessor, sought to erect an independent tyranny by which he might trample on freedom of his own proper wrong. He was "not born so high" in station, or in thought, as to become the comrade of haughty corruption. If seduced at all by power, it was in its humbler forms—the immunities of the unpaid magistracy and the chartered rights of small corporations, which found in him a congenial protector. If he had a preferable regard in the world, beyond the circle of his own family and friends, it was for these petty aristocracies, which did not repel or chill him. If he was overawed by rank, he was still more repelled by penury, the idea of which made him shiver even amidst the warmth of the Court of King's Bench, in which alone he seemed to live. His moral like his intellectual sphere was contracted; it did not extend far beyond the decalogue; it did not conclude *to the country*, but was verified *by the record*

His knowledge, not indeed of the most atrocious, but of the meanest parts of human nature, made him credulous of fraud; a suggestion of its existence always impelled his sagacity to search it out; and if conspiracy was the charge, and an attorney among the defendants, there were small chances of acquittal. The chief peculiarity and excellence of his decisions consist in the frequent introduction of the word '*reasonable*' into their terms. He so applied this word as in many instances to relax the severity of legal rules, to mediate happily between opposing maxims, and to give a liberal facility to the application of the law by Judges and juries to the varying circumstances of cases, which before had been brought into a single class. If he would not break through a rule for the greatest occasion, he was acute in discovering ways by which the right might be done without seeming to infringe it; and his efforts to make technical distinctions subservient to substantial justice were often ingenious and happy."

I reserve, as a pleasing *finale* for this memoir, Lord Tenterden's ardent and unabated devotion to classical literature, which confers high distinction upon him, and is so creditable to our profession,—showing that the indulgence of such elegant tastes is consistent with a steady and long continued and successful application to abstruse juridical studies, and with the exemplary performance of the most laborious duties of an advocate and of a judge. Lord Eldon never opened a Greek or Latin author after leaving college, and Lord Kenyon could never construe one. Lord Tenterden in his busiest time would refresh himself from the disgust of the *Libel Placitandi*, or the *Registrum Brevium*, by reading a Satire of Juvenal, or a chorus of Euripides. He likewise kept up a familiar knowledge of Sakespeare, Milton, Dryden, and Pope, but he was little acquainted with the modern school of English poets. When Sir James Scarlett on one occasion referred to the poetry of Southey and Wordsworth as familiar to the jury, Lord Tenterden observed, that "for himself he was bred in too severe a school of taste to admire such effusions."

Although he had long ceased to make verses himself, a few years before his death his passion for this amuse

ment returned, and in the following letter to Sir Egerton Brydges, dated 15th September, 1830, he gives an interesting account of his " hobby."

" I have always felt that it might be said that a Chief Justice and a peer might employ his leisure hours better than in writing nonsense verses about flowers. But I must tell you how this fancy of recommencing to hammer Latin metres after a cessation of more that thirty years began. Brougham procured for me from Lord Grenville a copy of some poems printed by him under the title of 'Nugæ,' chiefly his own, one or two, I believe, of Lord Wellesley's, written long ago, and a piece of very good Greek humor by Lord Holland. The motto in the title-page is four or five hendæcasyllabic lines by Fabricius. At the same time John Williams of the Northern Circuit, now the Queen's Solicitor General, who is an admirable scholar, sent me four or five Greek epigrams of his own. I had a mind to thank each of them, and found I could do so with great ease to myself in ten hendæcasyllables. This led me to compose two trifles in the same meter on two favorite flowers, and afterwards some others, now I think twelve verses in all, in different Horatian meters, and one, an Ovidian epistle, of which the subject is the Forget-me-Not. One of the earliest is an ode on the conservatory in the Alcaic metre, of which the last stanza contains the true cause and excuse of the whole, and this I will now transcribe :—

'Sit fabulosis fas mihi cantibus
Lenire curas ! Sit mihi floribus
Mulcere me fessum, senemque
Carpere quos juvenis solebam.'

" You see I am now on my hobby, and you must be patient while I take a short ride. Another of the earliest is an ode in the Sapphic meter on the Convallaria Maialis, The Lily of the Valley. I am a great admirer of Linnæus, and my verses contain many allusions to his system, not, however, I trust, quite so luscious as Darwin's Loves of the Plants, which, I believe, were soon forgotten. I have not seen the book for many years. I have one little ode written in the present year on a plant called the Linnæ Borealis, which, Sir J. Smith tells us, was a name given to it from its supposed re-

semblance to the obscurity of the early days of the great botanist. It is not common, and possesses no particular attraction. Smith says it has sometimes been found on the Scottish mountains, and I have a plant sent to me last spring by Dr. Williams. I will send you a copy of this also. You must give me credit for the botanical correctness of the first part; of the rest you can judge, and you may criticise as much as you please. There are three other meters of Horace on which I should like to write something, but what, or when, I know not. It is now high time to quit this subject."

By the favor of the present Lord Tenterden, I have before me a copy of all the poems here referred to, and several more which the Chief Justice afterwards composed to cheer his decling days. From these I select a few for the gratification of my readers. It should be known that botany had been taken up by the Chief Justice late in life as a scientific pursuit, and that this gave the new direction to his metrical compositions

DOMUS CONSERVATORIA.

Haud nos, ut Urbem, Flora, per inclytam
Olim Quirites, Te colimus Deam,
Fictumve, cœlatumve numen
Marmoreis domibus locamus;

Quas impudicis cantibus ebria
Lascivientûm turba jocantium,
Festis sulutatura donis,
Saltibus et strepitu revisat.

Sed rure ameno Te vitrea excipit
Ædes, remissis pervia solibus,
Quâ rideas imbres nivales
Et gelidis hyemem sub Arctis.

Secura jam non hospitio minus
Nostro foveris, sub Jove candidum
Quam si benigno Tu Tarentum, aut
Niliacum coleres Syenem.

Cæcis pererrat tramitibus domum
Ardor, quietis læta laboribus
Servire, jucundoque curas
Auxilio tenues levare.

Ergo sub auris plurima non suis
Ardentis Austri progenies viget,
Neve Occidentales Eois
Addere se socias recusant.

Herbæve, floresve, aut patrium dolent
Liqüisse cœlum, fervidus abstulit
Si nauta, mercatorve prudens,
Vel peregrina petens viator.

Misit colendas; Gentibus exteris
Spectandus hospes: salvus ab æstubus
Uliginosis, nubibusque
Lethiferá gravidis arenâ.

Non tale monstrum, naribus igneos
Spirans vapores, cessit Jasoni;
Nec tale donum sævientis
Conjugis innocuam Creontis.

Natam perussit: nec vagus Hercules
Tam dira vicit, perdomuit licet
Hydrasque, Centaurosque, clavo, et
Semiferum vilidus Giganta.

Sit fabulosis fas mihi cantibus
Lenire curas! Sit mihi floribus
Mulcere me fessum, senemque
Carpere quos juvenis solebam.

Prid. Cal. Jan. 1828.

GALANTHUS.

Anni primitiæ, Brumæ Phœbique nivalis
Pallida progenies,
Frigoris atque gelu patiens quæ caulibus albam
Findis humum teneris,
Seu proprium de lacte Tibi, potiusve cadente
De nive nomen habes,
Te juvenesque senesque hilares agnoscimus ultro
Auspiciumque tuum.
Tu monstras abituram hiemem, redituraque vernæ
Tempora lætitiæ;
Tu Jovis aspectus mutari, et nigra serenis
Cedere fata mones;
Demittensque caput niveum, floresque pudicos
Stipite de tereti,
Nil altum moliri homines, sed sorte beatos
Esse jubes humili;
Et tua blanditias juvenum nunc virgo suorum
Accipit, ipsa lubens,
Haud secus ac Zephyros si Sol Aurasque tepentes
Duceret Oceano.
Silicet hyberno plantis quæ tempore florent
Vis genialis inest,
Atque illis miros intus Natura colores
Sufficit, alma parens,
Æthere sub gelido pecudum licet atque ferarum
Langueat omne genus,
Et Cytherea tremens, pallâque informis agresti,
Algeat ipsa·Venus,
Maternoque puer vix tendere debilis arcum
De gremio valeat.

Prid. Cal. Feb. 1829.

CONVALLARIA MAIALIS.

Quo pedes olim valunere, robur,
Lætus et ruentis juvenalis ardor,
Si tuo, dulcis, redeunto curru,
Maia redirent;

Quærerem inculti nemorosa ruris,
Impiger densos penetrare valles,
Quà suos gratâ renovent sub umbrâ
Lilia flores.

Ducat haud fallax odor insolentem,
Et loquax flatu nimis aura grato,
Abditam frustra sobolem recessu
Prodet avito.

Conditus molli foliorum amictu,
Dum tener ventos timet atque solem,
Fortior tandem gracili racemus
Stipite surgit.

Flosculis nutans oneratus albis;
Non ebur lucet, Pariumve marmor.
Purius, nec quæ decorat pruina
Cana cupressos,

Talis et pectus niveumque collum,
Advenâ viso, pudibunda texit
Insulæ virgo, leviterque cymbam â
Littore trusit;

Voce sed leni facieque mota,
Hospitem fido prius indicatum
Somniis voti, magicas ad ædes
Nescia duxit;

Quæ diu, patris comes exulantis,
Vallium saltus coluit quietos,
Læta si nigros roseo ligaret
Flore capillos:

Mox tamen tristi monitu parentis
Territa, absentique timens, puella,
Nobilis supplex, petere ipsa Regem
Ausit et urbem.

Otii lassum accipitrem canemque
Seque captivum juvenem querentis
Et lacus dulces, Elenamque molli
Voce sonantis,

Palluit cantus;—adiit trementem
Lene subsidens, generosus hospes,
Simplici plumâ, viridisque veste
Notus, et ore.

Et suâ, quem tu petis, hìc in arce
Regius jam nunc, ait, est Jacobus;
Virgini nunquam gravis invocanti,
Mitto timores:

Te manent intus pater, atque patre
Charior; nudis Procerum capillis
Cœtus exspectat, poterisque opertum
Noscere Regem;

Et vagi posthàc Equitis pericla
Forsan, et suaves Elenæ loquelas
Et levem vates memori phaselum
Carmine dicet.

Cal. Maii, 1828.

I have only further to state, that the Chief Justice left not a splendid, but a competent fortune to his family. He is now represented by his eldest son John, the second Lord Tenterden, a most amiable and excellent man. As the title was worthily won, I trust that it may be as much respected as if he who first bore it had "come in with the CONQUEROR."